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MUTUAL BENEFITS

New York City's Shift to Mutual Consent in Teacher Hiring
Updated with a New Afterword



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MUTUAL BENEFITS

02 | EXECUTIVE SUMMARY

08 | CHAPTER ONE New York City's
2005 Teachers Contract: Codifying
Mutual Consent in Teacher Hiring

09 | CHAPTER TWO The Evidence:
Widespread Success of the
Mutual Consent Hiring System

16 | CHAPTER THREE The Challenge
of Unselected Excessed Teachers

28 | CHAPTER FOUR The Need for
a New Policy on Unselected
Excessed Teachers

36 | CONCLUSION

37 | AFTERWORD: A Case Study in the
Challenges of Education Reform

42 | METHODOLOGY

44 | APPENDIX

New York City's Shift to Mutual Consent in Teacher Hiring

Mutual Benefits

Mutual Benefits is the fourth in an ongoing series of policy briefs published by The New Teacher Project on urban school staffing policies. Previous studies have examined teacher hiring patterns in the school districts of Chicago, IL; Portland, OR; and Milwaukee, WI.

For more information, visit http://www.tntp.org/publications/other_publications.html.

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In 2005, the New York City Department of Education (NYCDOE) and its teachers union, the United Federation of Teachers (UFT), agreed to a groundbreaking contract that reformed outdated school staffing provisions. Specifically, the new contract changed the staffing process for teachers and schools in three major ways. First, it protected the right of schools to choose which teachers they hired, regardless of seniority. Second, it ended the “bumping” of novice teachers out of their positions by senior teachers who claimed these positions based on seniority and without input from principals or school staffs. Finally, it established a more open hiring process for “excessed” teachers (those displaced from their positions because of falling school enrollments, budget declines, programmatic changes, or school closures).

In short, the 2005 contract saw New York City transition from a system in which teachers and principals often had no input over teacher assignments to a system of “mutual consent,” in which both teachers and principals had to agree on all teacher placements. This policy shift brought to a halt the pervasive forcing of teachers on schools and of schools on teachers, trends that had tarnished the city’s staffing system. Viewed through the lens of effective school staffing practices, it was a significant step forward.

THE MUTUAL BENEFITS OF MUTUAL CONSENT

As this paper will illustrate, the mutual consent system has resulted in mutual benefits for teachers and schools by offering better choices, increased flexibility and greater transparency throughout the staffing process. The positive impact of this policy shift on New York City teachers is especially noteworthy.

This study finds that the mutual consent system has:

Earned strong support from New York City teachers: Mutual consent policies prioritize school fit and teacher and principal choice in the staffing process. In a 2007 survey, 87 percent of transfer teachers and 82 percent of excessed teachers agreed that it was important whether the principal of the school where they sought a new position wanted them to work there.

Successfully facilitated thousands of transfers: During the 2006 and 2007 staffing seasons, the system enabled more than 7,500 transfer and excessed teachers to secure jobs at new schools.

Resulted in positions that teachers find satisfying: Nine out of 10 transfer teachers and eight out of 10 excessed teachers described their new mutual consent positions as satisfying.

Resulted in positions that teachers plan to keep: Just 9 percent of teachers who successfully transferred in 2007 reported that they were considering another transfer attempt this year.

Provided fair and equal access to vacancies: Contrary to some predictions, the new staffing policies showed no evidence of disadvantaging more senior teachers, teachers from closing schools, or excessed teachers, all of whom were selected for new positions at rates similar to those for other teachers. In fact, senior teachers have been increasingly enthusiastic and successful participants in the new transfer system.

Not disadvantaged high-poverty schools: In addition to giving schools greater choice in teacher hiring, the system has not spurred an exodus of teachers from high-poverty schools.

A number of underlying factors appear to contribute to the success of the mutual consent system. First, it is far simpler and more transparent than the multi-faceted system it replaced, in which different schools used a number of technological systems to track hiring, and vacancies were not centrally accessible to all teachers in real time. Second, the new system respects a strong preference by educators to have consent from both sides in hiring decisions, as opposed to a process-driven system in which consent plays little if any role. Third, the district supports the new hiring process with new technological infrastructure built to facilitate interactions between teachers and schools.

Under the new contract, excessed teachers are no longer centrally assigned to positions. Instead, they interview with principals and must be selected for jobs like all other teachers.

For the more than 4,100 teachers excessed in 2006 and 2007, the ramifications of the mutual consent-based staffing system have been especially dramatic. For decades, in keeping with the provisions of the old contract, excessed teachers were routinely assigned by central Human Resources staff to available school vacancies regardless of principal and teacher consent. Principals complained about being forced to hire teachers who were not the right fit for their schools or, worse, poor performers who were passed from school to school. Teachers complained about having minimal input over their placements. Under the new contract, excessed teachers are no longer centrally assigned to positions. Instead, they interview with principals and must be selected for jobs like all other teachers.

This change in policy has been transformative for excessed teachers and schools, replacing a closed and rigid system that denied the importance of effective matches with an open one that prioritizes choice and

school fit for teachers. However, in honoring the will of teachers and principals in all staffing decisions, the mutual consent system has also created a new if not unexpected problem: not all teachers can find principals willing to hire them or schools that meet their needs. This represents an especially pressing challenge with respect to excessed teachers. Unlike transfer teachers, excessed teachers cannot simply continue teaching at their old schools if they are unable to find a new position, yet in accordance with current contract provisions, they are entitled to continue earning their full salary and benefits while in the excess pool. Today, a small but growing number of excessed teachers has been unable to find new full-time positions despite spending months or years in the search pool. The mutual consent system does not permit these teachers to be slotted into school vacancies as they have been in the past—nor do we believe it should—but the costs of maintaining them in a teacher reserve pool are becoming extreme.



LONG SHADOWS: THE PROBLEM OF UNSELECTED EXCESSED TEACHERS

Although the vast majority of teachers excessed in 2006 and 2007 were hired by principals for mutually consensual positions at new schools, a relatively small subset of excessed teachers appears unable or unwilling to find new positions. This paper documents the characteristics and job search patterns of 235 teachers excessed in 2006—approximately 9 percent of all teachers excessed that year—who despite widespread job opportunities and significant district job search support still had not secured new positions as of December 2007 (a year and a half later). Our analysis of 18 months of data on these teachers’ progress in the hiring process yields a detailed picture of this group and illuminates the challenge they pose for New York City. The findings are further reinforced by initial data on hiring patterns of 430 additional unselected excessed teachers from the 2007 hiring season, during their first six months looking for jobs.

The data indicate several trends in the characteristics and job-search patterns of the 235 unselected excessed teachers from 2006. As this paper will show, these teachers:

Remained unselected despite thousands of available vacancies: More than 14,000 teaching positions in New York City were filled during the period when these teachers did not find jobs.

Remained unselected though large numbers of their excessed colleagues found positions: Over 1,000 teachers excessed in 2006 found mutual consent positions, across all license areas and seniority levels (approximately 1,000 more were reabsorbed by their former schools). Those who remain unselected represent a small subset of the overall pool of excessed teachers.

Were generally less active in their job searches than other excessed teachers: Nearly half did not apply to even one vacancy through the city’s online job posting system. Even more declined to participate in district-sponsored job fairs or other job search supports such as workshops on interviewing and resume creation.

Were more likely to have a documented history of poor performance: By September 2007, unselected excessed teachers from 2006 were six times as likely to have received a prior “Unsatisfactory” rating as other New York City teachers.

Were not inherently disadvantaged by the mutual consent system: Data suggest that a teacher’s placement prospects were not negatively influenced in any significant way by characteristics such as seniority or having come from a school that was closed by the Department of Education. Variations in job-search outcomes appear to have been driven primarily by teachers’ performance history and degree of engagement in the job search process.

By design, the mutual consent system dictates that the NYCDOE will not force these teachers into open positions. Yet under the present collective bargaining agreement, excessed teachers receive full salary and benefits while serving as substitute teachers in a reserve pool (at a cost far higher than regular substitutes), and can continue to do so indefinitely, even without conducting a job search. According to survey data, some of them plan to do just that.

Of particular concern is the fact that excessed teachers are earning tenure despite not being able to find full-time positions. Although the NYCDOE has announced that it intends to enhance the consistency and thoroughness of the process of awarding tenure, it is difficult to conduct an effective evaluation of teachers who are acting as substitutes, sometimes on an itinerant basis. As of September 2007, 30 probationary teachers had already received tenure or completed their probationary period while serving in the reserve pool; another 51 teachers excessed in 2007 may earn tenure in 2008 while remaining unselected. Tenure affords these teachers additional due process rights and benefits that must be funded by the public for what could be decades of teacher service, even if they never find a full-time position—indeed, even if they never apply for another position.

The long-term costs of maintaining hundreds of unselected teachers in the reserve pool are staggering; already, the costs have been considerable. By the end of the 2007 school year, the NYCDOE had paid an estimated \$81 million in salary and benefits to the teachers excessed in 2006 and 2007 who had not found new jobs as of December 2007.¹

By the end of the 2007 school year, New York City had paid an estimated \$81 million in salary and benefits to excessed teachers who had not found new full-time positions.

As this cost grows each year, pressure will increase for a return to the pre-2005 system under which all excessed teachers could be slotted into school vacancies arbitrarily by Human Resources. However, the educational cost of such a system on schools, teachers and students makes such a solution untenable. Most unselected teachers would be placed in high-poverty schools with high turnover rates, perpetuating inequalities that have been tolerated for too long. Without the ability to control who works in their schools, principals would argue that they cannot be held accountable for school performance. Moreover, a return to forced placement would inevitably undermine the fair, open and effective staffing process now in place. Indeed, neither solution currently available—forcing into schools those excessed teachers who cannot find consensual placements, or funding those teachers indefinitely—is a reasonable or sustainable educational policy.

In short, the current policy governing excessed teachers is hard-wired for failure. The source of the problem is not the excessed teachers themselves, most of whom have diligently played by the rules. The problem is the rules themselves, which provide no incentives for teachers to search for positions aggressively and no feasible, sustainable remedy for teachers who remain without jobs for months, years, or longer. In the absence of action by the district and teachers union to amend the rules, New York City will be faced with an educational and financial crisis that will only grow with time.

FORGING A NEW SOLUTION

The evidence suggests that New York City's mutual consent staffing system has been highly successful, offering mutual benefits to teachers—to whom it provides a more open process that yields satisfying new jobs—and to schools—to which it gives greater control over teacher quality, the one variable most closely connected to student achievement. Its continued success hinges on the ability of the New York City Department of Education and the United Federation of Teachers to establish a more effective set of policies that address the current pool of unselected teachers and those who will follow in future years.

In light of the mutual consent system's success to date, a return to forcing or slotting would be a step backwards. The New Teacher Project believes that a new solution is necessary for unselected teachers, one that recognizes the value, commitment and service of New York City's teachers while preserving the integrity of the mutual consent system and acknowledging the real limitations under which the district must operate.

A sound policy on the placement of excess teachers must provide substantial job search support, extended reserve pool time for tenured teachers and well-designed incentives for teachers to search for jobs aggressively. Yet it also must relieve the district and city of an open-ended, unfunded commitment to keeping excess teachers who do not secure new positions on payroll.

We recommend that unselected teachers be placed on unpaid leave after a reasonable period of time in the reserve pool, with the ability to return to the district—at the same level of seniority and at the same salary step—if they are able to find a consensual placement within a certain number of years. Such a policy promises to provide fair opportunities and incentives for teachers without exacting an unfairly high price from New York City's students and schools.



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NEW YORK CITY'S 2005 TEACHERS CONTRACT: CODIFYING MUTUAL CONSENT IN TEACHER HIRING

Before 2005, the forced placement of teachers on schools dominated New York City's confusing, decades-old hiring system, leading to a variety of problems not originally envisioned by either the teachers union or the district. As documented in The New Teacher Project's 2005 report, *Unintended Consequences: The Case for Reforming the Staffing Rules in Urban Teachers Union Contracts*:²

- 1 Schools were required to hire large numbers of teachers whom they did not interview or select and who frequently did not fit the school's educational program or culture;
- 2 Excessed teachers often had minimal or no input as to where they would teach;
- 3 Principals wrongly took advantage of forced placement provisions to pass poor performers and struggling teachers from school to school instead of providing remediation or seeking to dismiss them through appropriate means, which circumvented and devalued the existing teacher evaluation system;
- 4 As the time-consuming forced placement process played out, promising new candidates from outside the system were lost to other districts; and
- 5 Novice teachers were regularly bumped from their positions and supplanted by more senior excessed and transferring teachers, even over the objection of the school principal and the teacher being bumped.

As *Figure 01* illustrates, the practices detailed in *Unintended Consequences* not only undermined the needs of schools and students, but also caused principals to view transfer candidates and excessed teachers with suspicion, regardless of their actual quality. Further, The New Teacher Project's national research (including additional analysis conducted in New York) has shown that forced placement provisions are no more popular with teachers than they are with schools.³ By almost any measure, New York's teacher placement system was impairing the district's ability to deliver quality instruction.

In 2005, however, New York City went from having some of the most restrictive contractual staffing rules to some of the most progressive. Under the new contract, city principals could no longer be forced to hire either voluntary transfer applicants or excessed teachers whom they did not believe were the right fit for their schools. Teachers were no longer at risk of being slotted into unfamiliar or unsatisfactory positions. Instead, all teachers in search of positions, including excessed teachers, were required to apply to posted vacancies, and both teachers and principals had to agree on all placements. Bumping was eliminated, as were restrictions governing when schools could hire teachers from outside of the school system.⁵

Figure 01

THE ADVERSE EFFECTS OF NYC'S PRE-2005 CONTRACT RULES⁴

In the 2004 hiring season in New York City:

One quarter of school-level vacancies were filled with an incumbent teacher from another school, without the consent of the receiving school.

More than half (55 percent) of principals who took voluntary transfers or excessed teachers during a hiring season said they did not wish to have one or more of them.

Almost two in five principals admitted to placing a poorly performing teacher on an excess list or to encouraging a poor performer to transfer. During the same period, only one tenured teacher in the entire district was formally terminated for poor performance.

The positions of approximately 50 percent of all first-year teachers were made available to more senior teachers, who were able to bump the less senior teachers at will and without an interview.

THE EVIDENCE: WIDESPREAD SUCCESS OF THE MUTUAL CONSENT HIRING SYSTEM

Requiring mutual consent between teachers and principals in all hiring decisions represented a giant step toward a hiring system rooted in teacher quality and school-based choice for New York City. During the two hiring seasons following the ratification of the new staffing rules, this approach resulted in numerous improvements for both teachers and schools by virtually any measure.

HIRING PROCESS IMPROVEMENTS AND ENHANCED JOB-SEARCH SUPPORT

Rather than applying for positions through central Human Resources or district offices, transfer applicants and excessed teachers applied for new positions directly to schools through the *Open Market Transfer System (OMTS)*. This new online system gave teachers real-time access to vacancies at all New York City schools and enabled them to apply for positions without having to identify their current status (e.g., as an excessed teacher). Between April and December 2007 alone, 3,189 vacancies were filled through OMTS. Data suggest that teachers had access to far more vacancies under the reformed hiring system because principals had less incentive to conceal vacancies now that there was no threat of receiving forced placements.

In addition, central NYCDOE Human Resources employees were required to shift their focus from slotting excessed teachers to providing them job search support. Toward this end, the NYCDOE partnered with The New Teacher Project (Tntp) to launch an Internal Hiring Support Center (IHSC) that operated from May through October during the 2006 and 2007 hiring seasons to maximize placement opportunities for excessed teachers. During each of the two hiring seasons, more than 850 excessed teachers accessed specific job supports from the IHSC.⁶ Specifically, the IHSC offered:

Access for excessed teachers to job fairs that had traditionally been restricted to new hires, as well as to excess-only job fairs;

A bi-weekly email newsletter specifically for excessed teachers;

Support in accessing and using OMTS, including a user guide mailed to excessed teachers;

Two dozen skill-building workshops for excessed teachers at citywide locations on topics such as resume creation, interview strategies and teaching sample lessons; and

Online job postings specific to excessed teachers.



WIDESPREAD TEACHER PARTICIPATION

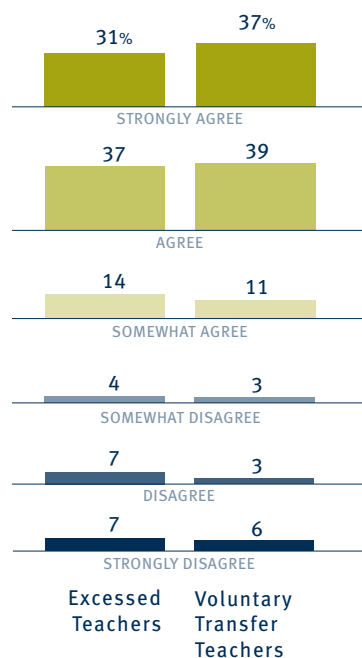
Under the new staffing system, approximately 7,500 teachers over the course of two years were able to move to new schools of their choice after being selected by their new schools as the best qualified candidates. Although some feared that the new system would negatively affect the ability of teachers to transfer between schools, district records show that the new system has allowed for greater freedom of movement among teachers than the old seniority transfer system, without forcing teachers on schools that may or may not be good matches for them. In a posting on the United Federation of Teachers' blog, EdWize, UFT Vice President Leo Casey remarked in his own analysis of the data on the 2006 hiring season:

"In general, UFT members were able to obtain many more transfers in 2006, under the new system, than they did under the old system—more than three times as many transfers in general, and more than six times as many seniority transfers. What is more, the numbers of transfers increased at every level of seniority: every seniority class of member, from the most novice through the middle years to the most senior, had significantly more transfers under the new system than the old."

FIGURE 02

EXTENT TO WHICH TRANSFER AND EXCESSED TEACHERS AGREE WITH THE STATEMENT:

"It was important to me when interviewing that principals wanted me to move to their school."



HIGH LEVELS OF TEACHER SATISFACTION WITH THE MUTUAL CONSENT HIRING PROCESS AND OUTCOMES

Teachers voluntarily transferring between schools and excessed teachers both strongly support the core principles of mutual consent—namely, that teachers and schools should have a voice in all hiring decisions, and that forced placements should never occur. When asked in a 2007 survey how much they agreed with the statement, “It was important to me when interviewing that principals wanted me to move to their school,” 87 percent of transfer teacher respondents and 82 percent of excessed teacher respondents somewhat agreed, agreed or strongly agreed.⁸ More than two-thirds of each group of teachers either agreed or strongly agreed (see *Figure 02*).

In surveys, teachers often spoke positively of the mutual consent system's focus on the fit between a teacher and a school. As one transfer teacher put it, “I think that schools are a sum of their parts. Good schools excel at collaboration—the principal, the teachers, the support staff all work together with one idea in mind [for] the kids. I want to be part of a school community like that so it was important that the principal and teachers saw me as fitting in with the culture of the school.”

Similarly, transfer and excessed teachers expressed satisfaction with the positions they were able to find through the mutual consent system as well as with the hiring process itself.

91 percent of the teachers who voluntarily transferred between schools in 2007 stated that they were satisfied with their new positions, and 88 percent reported that they were as satisfied or more satisfied with their new school than with their previous school.⁹

83 percent of the excessed teachers who found new positions through the mutual consent system in 2007 stated that they were satisfied with their new positions.¹⁰

Nearly three-quarters (71 percent) of voluntary transfer teachers expressed agreement with the statement that, “The transfer process helped me locate a position (school) that is a good fit.”

“I was very interested in teaching at a school in which my administration and colleagues would fully support me,” said one transferring Spanish teacher. “I spent a good deal of time researching the schools and truly ended up at a school that suits my personality and teaching style.”¹¹

ACCESS TO OPEN POSITIONS AND FAIRNESS OF PROCESS

By all indications, the mutual consent system has created a level playing field upon which teachers can compete for positions. Regardless of their seniority, their status as excessed or transfer teachers, or whether their previous school was closing, teachers found new positions at similar rates.

One of the most noteworthy aspects of the mutual consent system is that, for the first time in decades, the staffing process is not based exclusively on seniority. Instead, school principals can consider the full range of factors that may affect a teacher’s performance in the classroom: not just experience, but academic background, instructional philosophy and prior performance, among others.¹²

Concerns that the most senior teachers in the transfer and excess pool might be disadvantaged in the new system appear to be largely unfounded. From 2006 to 2007, senior teachers (defined as those with more than 13 years of seniority) made up an increasingly significant portion of the transfer pool and saw their selection rate increase sharply. In fact, the number of teachers with at least 13 years of seniority who transferred successfully increased by 39 percent from 2006 to 2007, as compared to an increase of 16 percent for transfer teachers overall.¹³ In short, senior teachers are participating in the Open Market in increasing numbers and with growing success. This finding is consistent with the UFT’s analysis showing that senior teachers attained more transfers under the new hiring system than the old one.¹⁴

Likewise, teachers were in general equally likely to be selected for new positions regardless of their status as transfers or excesses. Some worried that excessed teachers might be stigmatized in the hiring process because, in the past, some school principals used the excessing process to pass poorly performing teachers to other schools (thereby skirting what the principals perceived to be onerous teacher dismissal procedures) and because excessed teachers often come from closing schools. However, as illustrated in *Figure 03*, selection rates for transfer and excessed teachers are relatively equal across most common subject areas. This suggests that principals are more willing

to consider the full range of candidates available to them when they can control whom they hire, and that a teacher's status as a voluntary transfer or excess teacher has little or no impact on the principal's decision.

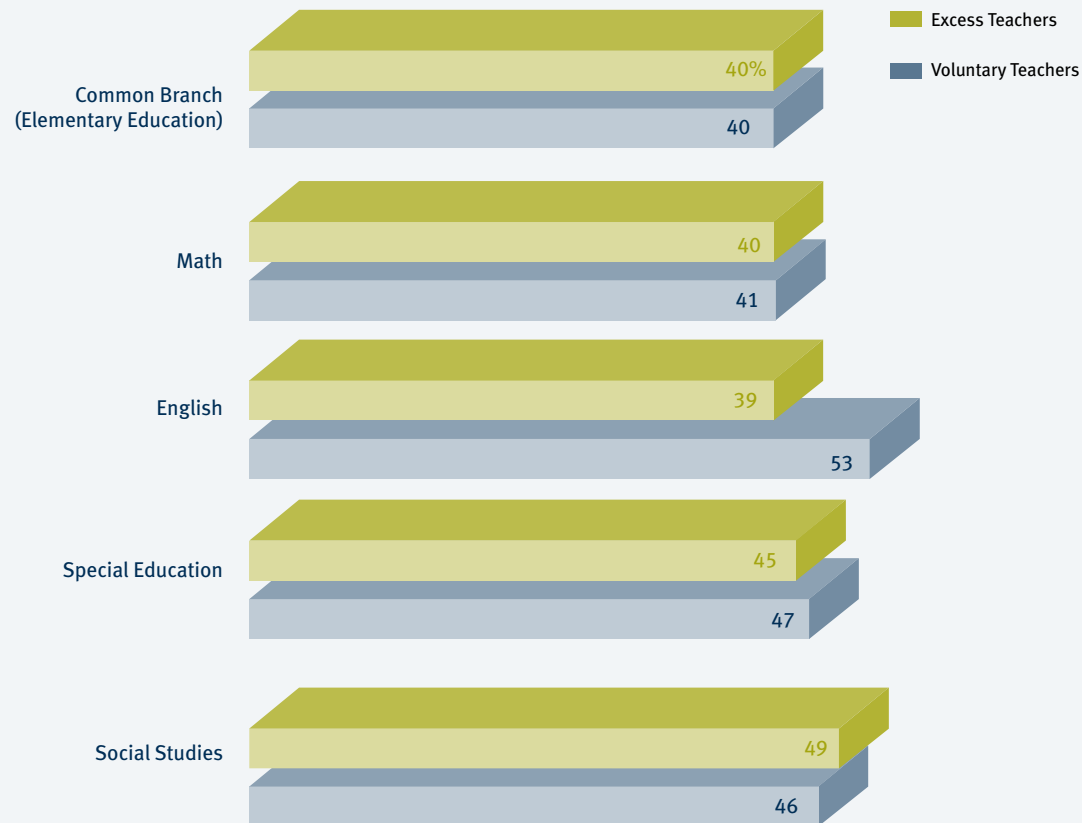
The experience of the first group of teachers excessed under the new hiring rules is particularly noteworthy. Out of the 2,742 teachers placed in excess during summer 2006, 91 percent were reabsorbed by their former school, were hired into a permanent position by a new school, or left the school system—most within a few months of being excessed. Only a relatively small subset of teachers—235 as of December 2007, or 9 percent of the original pool—remained in excess without finding

a position, providing evidence that the mutual consent system can provide adequate opportunities for excessed teachers, not just voluntary transfers.¹⁵

Finally, teachers specifically from closing or phasing-out schools were no less likely than other teachers to find a new position. In fact, these teachers were more likely to be selected for new positions than their colleagues. In 2007, the selection rate for transfer teachers from closing schools was 57 percent, as compared to 44 percent for transfer teachers from all other schools. Excessed teachers from closing schools were also successful, with a selection rate of 60 percent as compared to 59 percent for excessed teachers from schools that were not closing.¹⁶

Figure 03

SELECTION RATE BY SUBJECT AREA AND TRANSFER STATUS (2007)



EQUITY IN TEACHER DISTRIBUTION

Some observers speculated that high-poverty schools¹⁷ could not be staffed without a restricted hiring process and that the mutual consent system would result in an exodus of quality teachers to schools serving higher income populations, with the remaining vacancies left to be filled with novices. There is, however, no evidence that the system has harmed high-poverty schools. In fact, the majority (62 percent) of teachers who received transfers moved into a new school with an equivalent or higher level of poverty (see *Figure 04*).¹⁸

EFFECTIVENESS OF MATCHES

The mutual consent system appears to be facilitating effective matches between teachers and schools. Between 2006 and 2007, the total number of teachers applying for voluntary transfers decreased by approximately 21 percent, from 6,515 in 2006 to 5,153 in 2007. In 2007, just 9 percent of voluntary transfers who were selected for a position at a new school indicated that they intended to apply to transfer again next year.¹⁹

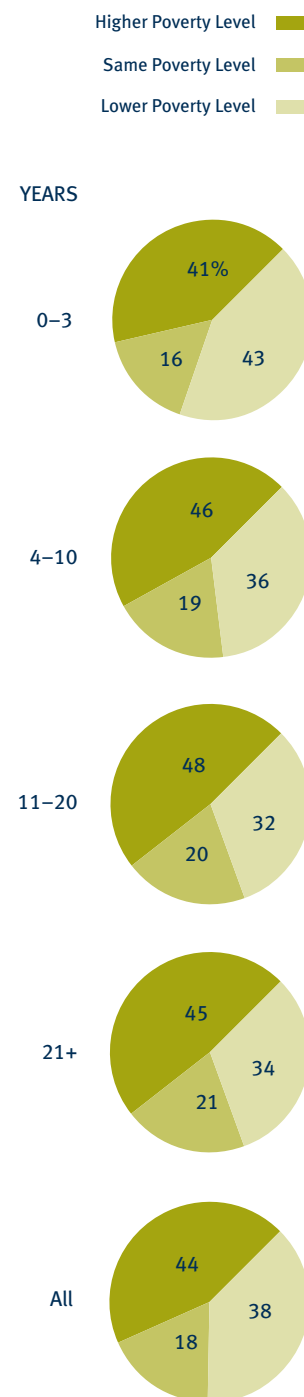
Although baseline data on teachers' intentions to transfer prior to 2006 are not available in New York, data from other urban school districts suggest that giving teachers and principals greater say in the hiring process reduces the churn of teachers from school to school and leads to satisfying assignments that teachers are not inclined to leave. For example, a 2007 survey of teachers in Milwaukee Public Schools showed that 52 percent of all teachers who were centrally assigned to their positions planned to consider a transfer the following year; in comparison, only 22 percent of Milwaukee teachers who were hired through a school interview process planned to transfer again.²⁰

Ultimately, this pattern benefits not only schools and students, by encouraging stability, but also transferring teachers themselves, whose increasing average selection rate from year to year (30 percent in 2006, 44 percent in 2007) may be linked to the decreasing size of the transfer pool as teachers find lasting matches.

Figure 04

RELATIVE POVERTY LEVEL* OF NEW SCHOOL (VS. PREVIOUS SCHOOL) FOR SELECTED TRANSFER TEACHERS, BY SENIORITY

*As measured by Free and Reduced Price Lunch (FRPL) quartile



Factors in New York City's Success and Lessons for Other School Districts

Several key factors may account for the success of New York City's mutual consent staffing system. These include:

Simplicity: The mutual consent system replaced a complex, multi-faceted hiring process with one that established a universal process for all schools and all teachers. All school vacancies are posted in a single system, and the process does not rely on confusing cycles or stages. Moreover, the system is built around a single intuitive concept, that teachers will do their best work in schools for which they are a good fit.

Transparency: Under the new system, New York City no longer makes hiring decisions through the central district office—a behind-the-scenes process that many teachers and schools found inscrutable. In addition, by ending seniority-based transfers and the forced placement of teachers on schools, the system has reduced the pressure on principals to conceal their vacancies strategically so they are not compelled to hire teachers they do not want. Consequently, this increased accuracy in vacancy reporting has opened a wider range of positions to teachers.

Teacher-focused: Transfer and excessed teachers overwhelmingly support the concept of mutual consent. Now, teachers in New York City are no longer subject to being forced into a position at a school for which they may not be a good match. This not only increases their investment in the hiring process, but also yields better, more stable placements. The system responds to the needs of teachers as much as it responds to the needs of schools and students. “I want to work at a school that shares my view on education,” said one transfer teacher. “So I was interviewing the school while they interviewed me. I want to work at a place that supports teachers and strives to improve student learning.” Said another: “This process helped me choose the right school [and] I plan to be there for a long time.”²¹

Support: To ensure that the new system could function effectively, the New York City Department of Education built an online “Open Market” system that allows teachers to view available vacancies directly and gives school principals access to information about job candidates. Few large urban districts have a comprehensive listing of positions available online for all teachers. After one hiring season, the district enhanced this technology to improve its functionality (for example, by allowing teacher candidates to upload their resumes). Although additional improvements need to be made, the technology has consolidated critical information and streamlined the staffing process overall. “The Open Market hiring process was very simple to follow, which made the important decision and process of transferring less stressful,” remarked one teacher.²² As described previously, the district also offered job-search support specifically to excessed teachers.

Ultimately, the potential long-term benefits of the mutual consent system for New York City teachers and schools are significant. As teachers find positions that meet their own needs and join schools for which they are a good fit, the overall movement of teachers among schools will likely decrease. School faculties can be expected to grow more cohesive, and retention of novice teachers, who no longer risk being displaced by more senior teachers or slotted into positions that they do not want, will probably improve. Meanwhile, school principals are likely to face growing competition to attract top teaching talent and respond by more aggressively recruiting high-quality teachers to their schools, becoming more sophisticated evaluators of teacher quality and paying greater attention to their hiring decisions.

For other urban school districts, New York City's experience moving to a mutual consent-based hiring system offers an exceptional case study in collaboration between a district and its teachers union and a model for effective hiring reform. Both district leaders and the United Federation of Teachers took a leap of faith in their willingness to adopt an approach to staffing that embraces the primacy of job fit for teachers in a new way, deviating from the traditional labor-management dynamic in the process. What has emerged is a highly functional and transparent hiring system that results in satisfying placements for the vast majority of transfer and excessed teachers while giving schools greater control over their instructional teams.

As New York City continues to rely on the mutual consent system, the district will need to make additional improvements—especially to the Open Market Transfer System technology it developed to support the staffing process. Survey responses and usage data from teachers and principals suggest that changes to improve the accuracy of vacancy information and search tools, enhance applicant tracking and provide better information about application status would encourage more teachers and principals to use the system.

Of most immediate concern, however, is the very real quandary of what to do with teachers who are excessed and do not find new positions—a challenge that threatens to overshadow all of the above successes. An effective policy for excessed teachers must capitalize on the considerable strengths of the mutual consent staffing system while supporting veteran teachers who may require extended time to find new positions.

The current contract does not provide a realistic and financially sustainable solution for addressing the existing group of unplaced teachers or those who will be identified in subsequent years. A resolution to this dilemma is in the interest of both the New York City Department of Education and the United Federation of Teachers. In the following chapter, we describe the hiring patterns of excessed teachers and present a series of recommendations that may form the foundation of such a resolution.



THE CHALLENGE OF UNSELECTED EXCESSED TEACHERS

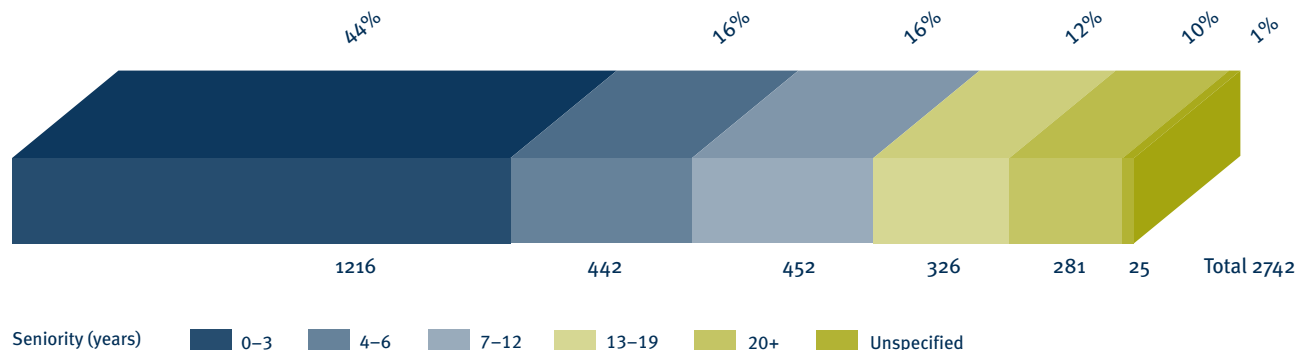
Devising an effective policy for addressing the issue of unplaced excessed teachers depends first on knowing who they are and understanding the important role that teacher seniority plays in the excessing process.

Teacher excessing decisions are based on seniority within the city school district and within the license area. For example, a biology teacher in her second year of teaching would automatically be excessed before a biology teacher in her fifth year of teaching. Principals have very limited discretion to deviate from seniority when excessing teachers. Therefore, most excessed teachers are relatively junior employees who happen to be working at a school that is required to make reductions in their content area. In fact, 60 percent of teachers excessed in 2006 had six or fewer years of district seniority, as illustrated in *Figure 05*. Just one in 10 excessed teachers had at least 20 years of seniority.

This section reviews the data on the pool of teachers excessed in 2006 (the first year of the new hiring rules) and focuses on differences between those who were and were not subsequently hired. While data on 2007 unselected excessed teachers are also available, the total number of teachers excessed in 2006 was larger and the data on these teachers' hiring patterns span a longer period of time (18 months as compared to six for 2007 excessed teachers). Having tracked these teachers' progress in the hiring process for more than a year and a half, we believe that their experiences are illustrative of broader trends and future challenges that the NYCDOE and the UFT are likely to encounter. Although there are some important differences between teachers excessed in 2006 and those excessed in 2007 (as we discuss in section IV), our initial data on 2007 excessed teachers show that many of the same patterns are replicated.

Figure 05

SENIORITY OF 2006 EXCESSED TEACHERS



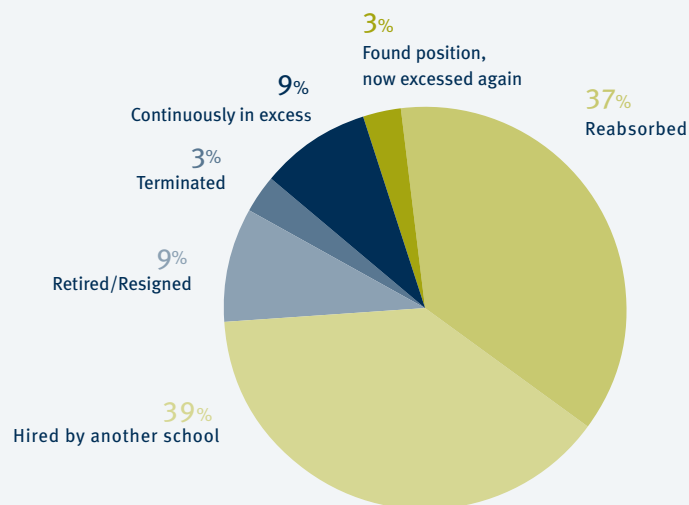
HIRING OUTCOMES FOR 2006 EXCESSED TEACHERS

Under the reformed contract, principals, with the input of school staff, are able to select teachers hired for their schools. Excessed teachers who fail to receive a consensual placement are placed in an Absent Teacher Reserve pool (ATR), either in their former school or another school, with an obligation to report to the school site each day and fill in as short- or long-term substitutes.²³

Figure 06

STATUS OF 2006 EXCESSED TEACHERS AS OF DECEMBER 7, 2007

Figure 06 shows that the vast majority of teachers excessed in 2006 (76 percent) were either hired by another school or reabsorbed to a former position.²⁴ As of December 2007, the unselected subset of excessed teachers comprised only 9 percent of all teachers placed in excess in 2006.



Most of the teachers excessed in 2006 were excessed from their schools in May or June. Of this group, those who found new placements did so relatively quickly:

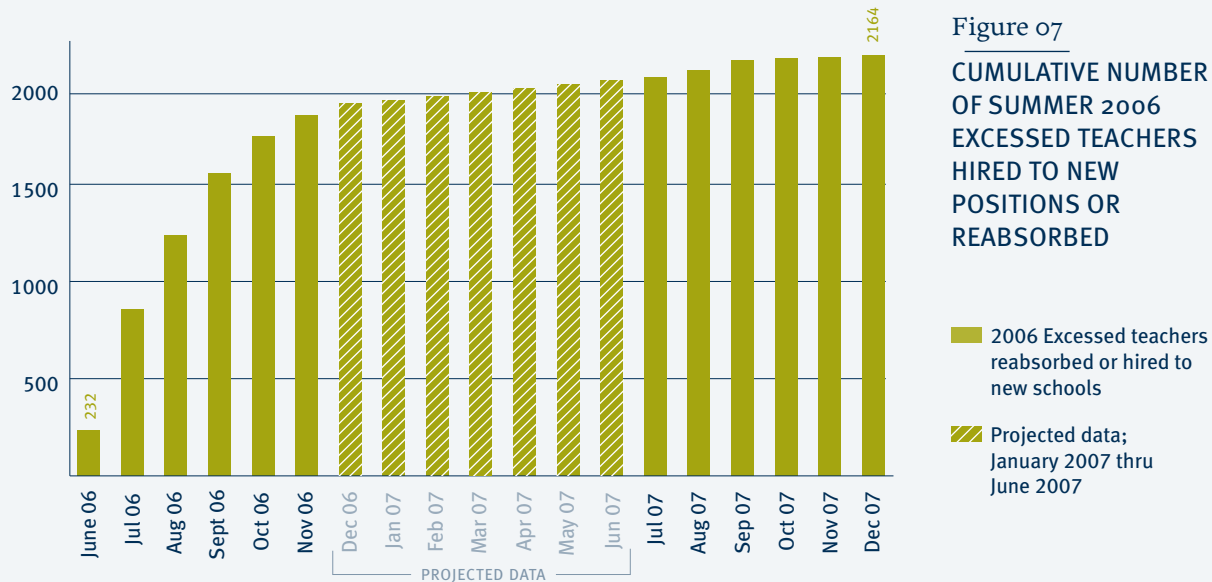
By the first day of the 2006-07 school year, the number of teachers in excess had shrunk from over 2,700 to fewer than 800.

By December 2006, 553 excessed teachers remained unselected.

After that date, the hiring rate for 2006 excessed teachers remained relatively low even though thousands of vacancies were filled in that period. The excessed teacher pool diminished from 553 teachers in December 2006 to 235 teachers by December 2007 (see Figure 07).

In sum, teachers were likely either to find positions within six months of being excessed or not at all. More than 88 percent of teachers who were eventually hired by a new school or reabsorbed reached that status by December 2006. In the following year, relatively few excessed teachers obtained regular positions.

The data show that, for most of the 2006 hiring season (June to September 2006), principals not only hired regularly from the excessed teacher pool, but also preferred the excessed pool over the pool of new hires available at the same time. This trend suggests that principals placed a priority on hiring teachers with district experience.



After August, however, principals generally chose to hire teachers new to the system rather than remaining excessed teachers.

During the summer of 2006, 7,429 teachers newly hired by the district began their search for school-level positions.

By December 2006, only 1 percent of new hires remained unplaced, compared to 20 percent of excessed teachers.

For most of the 2006 hiring season, principals not only hired excessed teachers regularly, but also preferred excessed teachers over new teachers.

Figure 08

TEACHERS REMAINING UNSELECTED BETWEEN MAY AND DECEMBER 2006

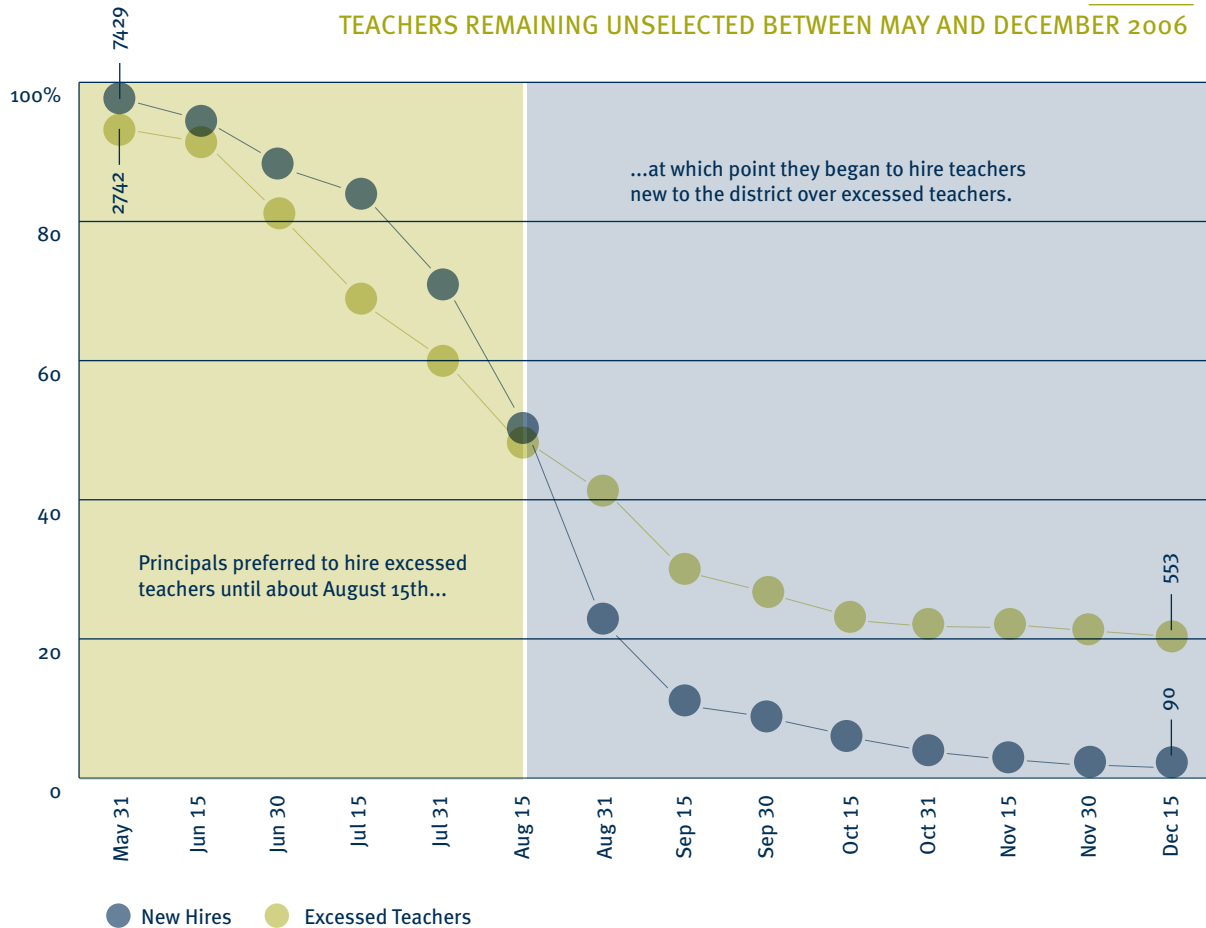


Figure 08 illustrates how the selection rate for excessed teachers, which initially exceeded the rate for new hires, slowed considerably after August 2006, while the rate for new hires continued to be robust. Eventually, nearly all of the new hires found positions, while a subset of excessed teachers remained unselected despite a lengthy period in the search pool.

The data in Figure 08 suggest that the excessed teacher pool consisted primarily of viable candidates who were quickly snapped up by eager principals. To some degree, this is intuitive. The NYCDOE's contract with the UFT does not allow principals to consider teacher quality, whether measured by subjective administrator judgment or past ratings on official evaluations, in deciding which teachers are excessed. Most of these teachers are talented, hard-working educators who were cut from their schools simply because other teachers had greater seniority or because their schools were closed entirely.

However, the dramatic slowdown in the hiring of teachers who remained in excess beyond summer 2006 suggests that the pool also included a subset of weaker candidates who were not perceived by principals to be of high quality as well as those who were not searching actively. This, too, is intuitive. While excessing should technically be random with respect to teacher performance, The New Teacher Project's past research has shown that this is not always the case; at least some principals persuade poor performers to volunteer for excessing or cut programs selectively to cause the excessing of specific teachers rather than remediate or seek to terminate these teachers.²⁵ As we discuss next, data on unplaced excessed teachers provide evidence that this passing around of poor performers continues to be the case in New York City.

CHARACTERISTICS AND JOB-SEARCH PATTERNS OF UNSELECTED EXCESSED TEACHERS

Why did some excessed teachers find positions so quickly while others remained unselected for over a year, even as more than 14,000 positions citywide were filled with other teachers?

Our analysis of the 235 teachers excessed in summer 2006 who remained unselected in December 2007 reveals that many unselected teachers appear to have been unable to find new positions due to one of two major reasons, namely: (1) a lack of assertiveness in the job search process or (2) a history of past performance issues that may have made them unattractive candidates to school principals.

Although there are certainly exceptions, these are the prevailing patterns for unselected excessed teachers. Below, we examine these trends as well as other unselected excessed teacher patterns in further detail.

Unselected teachers were less assertive in searching for jobs

Many teachers excessed in 2006 who remained unselected in December 2007 did not take full advantage of available job search supports and placement opportunities. Our data show:

Nearly half (46 percent) of excessed teachers who were not hired during their initial summer of searching did not apply for any vacant positions through the online Open Market Transfer System, as compared to 38 percent of selected teachers.

Of those not applying to any positions online who remained unselected, 80 percent also did not attend any NYCDOE-sponsored job fairs.

A December 2006 survey of excessed teachers indicated that **38 percent of respondents remaining in excess had applied for five or fewer positions since being excessed**. At that point, most unselected teachers had been in excess for six months or more.

These data are especially striking because district records indicate that there were many jobs for teachers to pursue. For example, at the beginning of August 2006, there were 61 special education teachers remaining in excess and 166 open special education positions posted online; similarly, there were 96 unselected excessed teachers with science certification and 385 posted science vacancies. Moreover, most excessed teachers were certified to teach in standard subject areas; of the 553 excessed teachers unselected as of December 2006, only 16 (2.9 percent) held licenses that could be categorized as “esoteric,” meaning that few vacancies would exist for that license (e.g., home economics).

Over 14,000 positions were filled during the period when 235 excessed teachers did not find jobs

Teachers not selected during their first summer in excess tended to be even less aggressive in seeking a position the following summer, when thousands of additional vacancies became available. A large majority of these teachers did not file even a single online application during the 2007 hiring season.

64 percent of teachers excessed in summer 2006 who remained unselected at the time OMTS opened in the spring of 2007 did not file any online job applications between that time and September 2007. Of the 64 percent not applying for positions online, 87 percent did not attend a job fair in 2007.

Teachers from the same group who found new positions or who were reabsorbed to their former positions during their second summer in excess filed substantially more applications online, on average, than their colleagues who remained without a placement (see *Figure 09*).

While it is possible that teachers who did not use the online application system used other avenues to seek positions (e.g., by contacting principals directly), it is noteworthy that all voluntary transfers were required to use OMTS to file applications, making it by far the leading job search mechanism for incumbent teachers. Given the relationship between the use of OMTS by an excessed teacher and the likelihood of that teacher finding a position, it seems inevitable that many teachers who failed to access available search opportunities through OMTS would remain unselected in September 2007.

Unselected teachers were more likely to have a documented history of poor performance

Unselected excessed teachers were significantly more likely than New York City's total teacher population to have received an "Unsatisfactory" performance evaluation:

Of all teachers excessed in the summer of 2006, 6 percent were assigned at least one unsatisfactory annual rating (or "U" rating) in the past 10 years—double the rate of the entire New York City teacher population—suggesting that poor performers continued to be excessed at higher rates than other teachers.

In December 2006, 12 percent of the remaining unselected excessed teachers had received a "U" rating.

By September 2007, the percentage of unselected excessed teachers who had received a "U" rating in the past 10 years had jumped to 19 percent—over six times the rate of the entire NYC teacher population²⁶ (see *Figure 10*).²⁷

Figure 09

2007 ONLINE APPLICATIONS FILED BY TEACHERS NOT SELECTED IN 2006

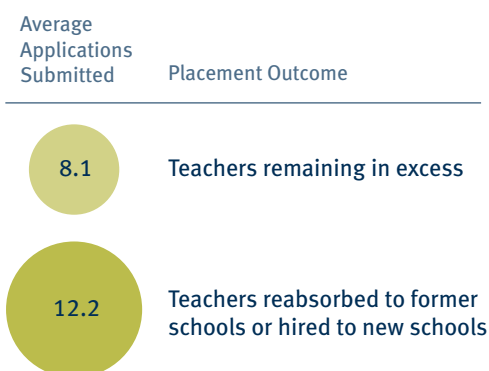


Figure 10

PERCENT OF UNSELECTED TEACHERS WITH A PAST "U" RATING



Although even at 19 percent the overall incidence of prior “U” ratings among unselected excess teachers may appear to be low, it remains a telling figure in light of the extreme rarity with which teachers are assigned such ratings. As indicated above, only 3 percent of all New York City teachers hold a past “U” rating. In 2005-06, only 474 of New York City’s 79,000 teachers received a “U” rating, and only 932 received one in 2006-07. In this context, it is reasonable to suggest that the absence of a “U” rating should not necessarily be interpreted as evidence of entirely satisfactory performance so much as the presence of one suggests exceptionally poor performance.

It is also worth emphasizing that most excess teachers during this period had an excellent service history and faced little difficulty in finding positions. However, the data suggest that some excess teachers will be unlikely to find new positions no matter how long they are permitted to search, especially teachers with a documented history of weaker performance. Over time, as the pool of excess teachers becomes more concentrated with struggling teachers, the strong teachers who are excess (and who appear to constitute the vast majority of excess teachers) may be unfairly disadvantaged.

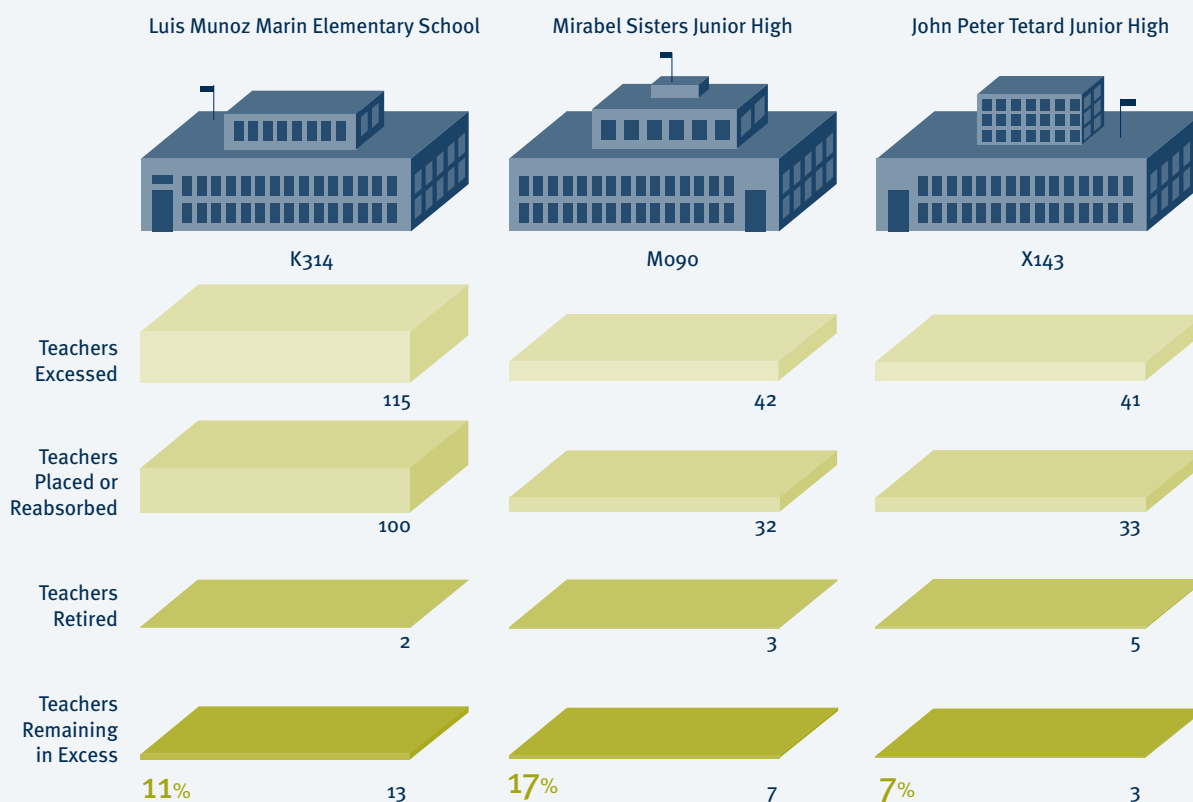
Bias against excess teachers from closing schools does not appear to be a factor

It is appropriate to consider whether other factors besides job search intensity or prior performance may have had a negative impact on the ability of excess teachers to find new jobs. For example, some observers predicted that teachers excess due to school closures would face particular challenges in locating new positions because they might be stigmatized by their associations with failing schools.

In reviewing placement records from 2006-07, we do not find evidence to support this hypothesis. Excess teachers from non-closing and closing schools were relatively comparable in their success finding new jobs. Of the teachers excess from non-closing schools, 80 percent found school-level positions by September 2007 (47 percent were reabsorbed to their former positions and 33 percent found new positions); 70 percent of teachers from closing schools found school-level positions by September 2007 (51 percent in another school and 19 percent reabsorbed to their old positions).²⁸ The differences between the two groups are largely attributable to the fact that teachers from closing schools were reabsorbed much less often than teachers from other schools. This is intuitive given that closing schools have fewer vacancies during the phase-out process and none upon closure.

Figure 11 reports outcomes for teachers from the closing schools that excessed the most teachers during summer 2006. Out of 198 teachers excessed from these schools, just 23 (less than 12 percent) failed to find positions, which is roughly consistent with the hiring rate for excess teachers overall. Moreover, none of the three schools had more than 17 percent of its teachers remaining in excess as of December 2007.

Figure 11
CLOSING SCHOOL CASE STUDIES (AS OF DECEMBER 2007)



Characteristics of the 23 teachers who remain in excess from these closing schools:

4 (17%)

have at least one
U rating in the
past 10 years

None

hold an esoteric
(highly uncommon)
subject licence

11 (48%)

did not submit
any online
applications for
positions in 2007

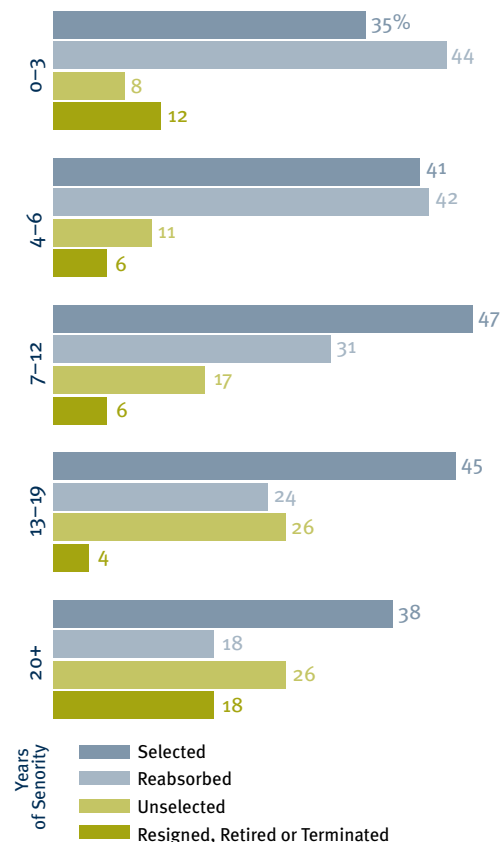
15 (65%)

did not attend
any 2007 job fairs

Even in those cases where a significant number of teachers from a particular closing school failed to find positions, the evidence suggests factors at play other than bias. For instance, just 20 of 59 teachers excessed from a Bronx high school that closed in 2007 found positions by December 2007, leaving 39 in the reserve pool. However, just 14 of the 39 unselected teachers had

applied for vacancies through the OMTS online application system, and several of these applicants filed for very few positions.

In short, excessed teachers from closing schools fared relatively well in the job market. When they fared less well, their lack of success appears to be attributable to less active job searches.

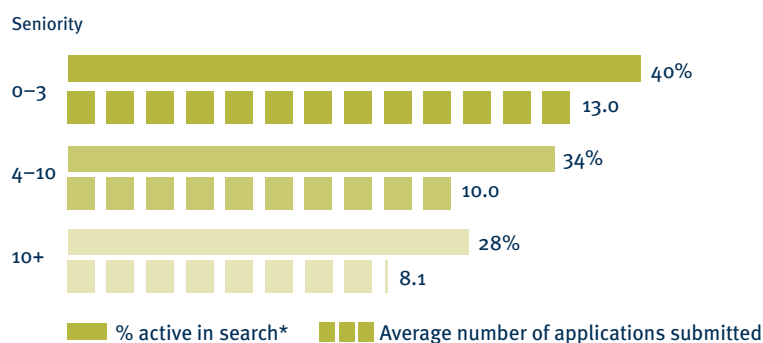


Job search engagement, re-absorption rates and past performance affected selection rates for senior teachers

Excessed teachers with greater seniority were slightly more likely to remain unselected than more junior teachers. As depicted in *Figure 14*, a primary driver for this outcome was job search intensity. Data collected during the past two hiring seasons suggest that senior teachers participated less actively than other teachers in the job search process. During summer 2006, teachers with less seniority were more likely to apply for at least five positions in OMTS (see *Figure 14*) and, as a group, teachers with three or fewer years of seniority applied for over 50 percent more positions, on average, than teachers with more than 10 years of seniority.

Figure 14

SUMMER 2006 ACTIVITY OF EXCESSED TEACHERS IN JOB SEARCH, BY SENIORITY LEVEL



*An "active" job search is defined as registering for OMTS and submitting at least five applications.

Figure 15 shows that about two-thirds of teachers with very little seniority (0-3 years) submitted at least one application through the OMTS system, compared to just half of the most senior group. *Figure 16* shows a similar trend related to attendance at Department of Education hiring fairs. In each case, there is a clear relationship between job search behavior and teacher seniority.

Given that hiring fairs and online applications are two of the primary opportunities for teachers to find positions, the disparity in participation rates between more senior and less senior excessed teachers is especially noteworthy.

Figure 15

2006 EXCESSED TEACHERS SUBMITTING AT LEAST ONE ONLINE APPLICATION BY DEC 2006, BY SENIORITY

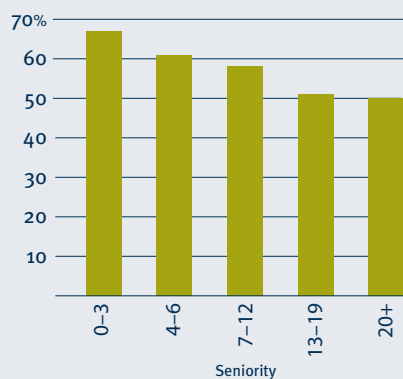
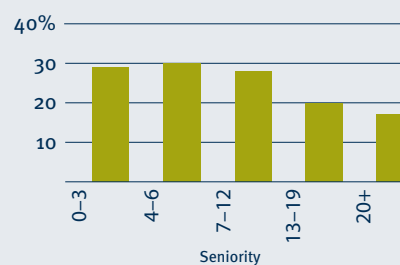


Figure 16

2006 EXCESSED TEACHERS ATTENDING AT LEAST ONE JOB FAIR BY DEC 2006, BY SENIORITY



These graphs include teachers who sought a position at a new school; teachers who resigned, retired, or were reabsorbed are not included.

Table 01

PERCENT OF TEACHERS EXCESSED FROM CLOSING OR PHASING-OUT SCHOOLS, BY SENIORITY LEVEL

Seniority (years)	Percent from Closing Schools	Number from Closing Schools	Total Excessed
0–3	23%	275	1,216
4–6	41%	181	442
7–12	48%	218	452
13–19	53%	173	326
20+	66%	186	281
Unspecified	8%	2	25
Total	38%	1,035	2,742

Table 02

PERCENT OF UNSELECTED TEACHERS WITH U-RATINGS, BY SENIORITY (DEC 2006)

Seniority	Total Number	Number with U-rating	% with U-rating
0 to 3	138	3	2.2%
4 to 6	90	7	7.8%
7 to 12	113	14	12.4%
13 to 19	113	26	23.0%
20 or more	93	16	17.2%
Unspecified	6	1	16.7%
Total	553	67	12.1%

A second factor that played a role in hiring rates for senior teachers is reabsorption. District records show that less senior teachers were more likely than their more senior colleagues to return to their former school when a position became available. This was largely due to the fact that senior teachers tended to be excessed from schools that were closing altogether (see *Table 1*); indeed, because excessing is seniority-driven, it is not common for very senior teachers to be excessed *unless* their school is closed.²⁹

As discussed above, survey feedback from more senior excessed teachers suggests that some may have been less comfortable using the online application technology and could require additional support or training. However, discomfort with technology does not explain the lower rate of job fair attendance among senior teachers. It is possible that senior teachers had become accustomed to a placement paradigm dominated by seniority transfers and slotting for excessed teachers. For these teachers, adapting to a process based on mutual consent may have represented a more significant transition. As one unselected teacher with 17 years of seniority put it, “I’ve done everything you all have asked me to do. It’s up to HR to find [me] a position.”³⁰

Finally, and perhaps most importantly, there is evidence that more senior teachers may remain unselected at higher rates because they are more likely to have a history of performance problems. Of the excessed teachers with 13 or more years of seniority who remained unselected as of December 2006, 20 percent had a prior unsatisfactory rating, as compared to only 7 percent of more junior teachers (see *Table 2*).

Between December 2006 and September 2007, the pool of unselected excessed teachers from 2006 decreased by 55 percent (from 486 to 221), yet the number of teachers with a U-rating decreased by only 25 percent (from 67 to 50). In other words, U-rated teachers were hired at less than half the rate of teachers without a U-rating. This suggests that principals may have declined to hire senior excessed teachers as frequently as they did other teachers not because of any particular bias or disincentive, but because a larger portion of these teachers were weaker job candidates.

Whatever the reason, the outcomes for more senior excessed teachers under the new system must continue to be a focus for the NYCDOE and the UFT. Although they make up a relatively small percentage of all excessed teachers, the dedication and knowledge of New York City's experienced teachers make them an important asset to the school system. It is critical that hiring policies ensure that they are treated with respect and fairness. At the same time, it is equally important that all teachers engage actively in the job search process and adapt to the technological tools in current use.

We believe that the solution is not to return to the practice of forcing unselected teachers on schools, but to ensure

that these teachers (who constitute a relatively small cadre within the excessed pool as a whole) are supported and treated fairly. Although a return to slotting may appear to be an attractive and efficient solution from a fiscal perspective, especially given the relatively small number of teachers involved, it would inevitably corrode the fair, open and effective staffing system that is now serving New York City's public schools extremely well in general, returning the district to the days when principals hid vacancies and ineffective teachers were passed along from school to school. That very few of New York's 79,000 teachers would be subject to forcing is all the more reason not to design a system around their unique situation.



THE NEED FOR A NEW POLICY ON UNSELECTED EXCESSED TEACHERS

DATA FOR 2007 EXCESSED TEACHERS CONTINUE PATTERNS ESTABLISHED IN 2006

At first glance, two major differences seem to separate the 2006 and 2007 excessed pools: their size and early rates of selection. Excluding teachers excessed by District 79 schools (many of whom changed jobs during the course of a significant one-time restructuring process, and who were subject to different excessing and hiring rules than other teachers³¹), an additional 1,418 teachers were excessed in 2007—far fewer than the 2,742 excessed in 2006. As of December 2007, 430 (30 percent) of the newly excessed teachers remained unselected. In comparison, at the same point in 2006, 553 (20 percent) of all excessed teachers from that year had not yet found positions (as previously illustrated in *Figure 7*). However, both the large discrepancy in size and the more modest difference in early selection rates may be largely explained by a single factor.

The data suggest that significantly more “unnecessary” excessing—that is, excessing that resulted in the re-absorption of the same teachers soon thereafter—occurred in 2006. Of the 2,742 teachers excessed in 2006, 820 (30 percent) were reabsorbed by their schools by September, just a few months later; in contrast, of the 1,418 teachers excessed in 2007, only 177 (12 percent) were reabsorbed by their schools by September of that year.³² Less unnecessary excessing is desirable as it minimizes disruption and stress for teachers and results in a more efficient staffing system. In this case, the higher rate of unnecessary excessing in 2006 inflates the overall size of the 2006 excessed teacher pool while also making it appear that excessed teachers secured new positions more easily that year than those excessed the following year.

Our analysis of the data indicates that more 2007 excesses remained unselected because far fewer of them were “unnecessary” and therefore never reabsorbed.

The remaining data on the hiring patterns of teachers excessed in 2007 mirror the 2006 excessed teacher data in several respects. Teachers who were excessed in 2007 and not selected for positions were less likely to have utilized the primary job-search tools and opportunities offered by the NYCDOE: 62 percent of unselected teachers did not apply for a single position through the Open Market Transfer System; of those teachers, 86 percent did not attend even one hiring fair. Teachers from phasing-out and closing schools were successful in finding positions at the same rate as their colleagues who were excessed for other reasons. Finally, unselected excessed teachers were more likely than the general population of teachers to have received an Unsatisfactory rating in the past 10 years, and the concentration of teachers in the excess pool with U ratings increased over time, as a high percentage of teachers without U ratings found positions. By December 2007, nearly 15 percent of unselected excessed teachers had a past U rating, compared to 5 percent of selected excessed teachers.

These trends suggest that 2006 was not an anomaly, and that the challenge of unselected excessed teachers will continue to grow until it is addressed through well-reasoned policy solutions.

FINANCIAL BURDEN OF CURRENT APPROACH MAKES IT UNTENABLE

The 2005 teachers contract permits teachers to remain in the Absent Teacher Reserve pool indefinitely while receiving full salary and benefits, even without having already earned tenure. Although the number of teachers remaining in excess is relatively small, the financial costs of this policy to the school system are extraordinary. By June 2008, the total cost of providing salary and benefits to the 665 excessed teachers who have remained unselected since their excess date reached approximately \$81 million.³³ More than a third of this amount (an estimated \$31 million) supported the 235 teachers who had not held full-time positions since being excessed in 2006—more than 18 months earlier.

Viewed another way, of the 1,418 teachers newly excessed in 2007, over half (835 teachers) remained unselected on the first day of the 2007–08 school year. This means that, in total, New York City began the current school year with more than 1,000 teachers in the reserve pool.

In the absence of an effective policy solution, these costs will only continue to grow as more teachers are placed in excess and are unable to find positions. Elected officials and the general public are unlikely to support ongoing financial commitments to a subset of teachers with a collective history of performance problems or who appear to have expended little effort locating a new placement.

TEACHERS ARE EARNING TENURE WHILE SERVING IN THE RESERVE POOL

One of the most challenging aspects of the current policy is that excessed teachers in New York City are earning tenure despite not being able to find full-time positions. Indeed, the largest number of unselected teachers from the 2006 excess group (approximately 25 percent) had three years of seniority or less when they were excessed. As of September 2007, 30 probationary (non-tenured) teachers had already received tenure or completed their probationary period while serving in the reserve pool; an additional 51 teachers excessed in 2007 may earn tenure in 2008 while remaining unselected.³⁴



Because probationary teachers can remain in the reserve pool indefinitely, it will be possible for some probationary teachers to become tenured despite serving for relatively short periods as full-time classroom teachers. Approximately 20 teachers who were excessed in summer 2006 with one year or less of seniority still remained in excess as of December 2007. Teachers in this group had accumulated almost three additional semesters toward tenure—more time than they had accumulated prior to being excessed.

Each tenure commitment confers substantial new due process rights and benefits. In practice, the achievement of tenure translates to exceptional job security for what could be decades of service. Tenure is an important recognition of meritorious service that should be granted after careful consideration and review.

Although the NYCDOE has said that it intends to establish a more thorough process for granting tenure, it is difficult to conduct effective evaluations of teachers in the reserve pool who lack regular classroom assignments. From a policy standpoint, it is problematic to permit the granting of tenure to teachers who may not have taught consistently at one school placement or who have been unable to find a permanent position at a school over an extended period of time.

As the city struggles to invest in new school buildings, higher teacher pay, advanced curricula and smaller class sizes, the millions of dollars needed every year to pay full-time teachers to serve as reserve pool substitutes will restrict the district's ability to support other initiatives. Moreover, in the absence of a contractual mechanism that limits the time a teacher can spend in the reserve pool, the city's financial obligation will only grow as new groups of excessed teachers are added to the pool each year.

Excessed teachers are earning tenure while in the reserve pool, giving them exceptional job security and benefits even if they never find a full-time position.



CURRENT POLICIES PROVIDE NO CLEAR INCENTIVES FOR UNSELECTED EXCESSED TEACHERS TO SEEK POSITIONS

Under the current contractual rules, excessed teachers are under no obligation to search for a new position. Indeed, a teacher might elect to serve in the reserve pool permanently. This may explain why some teachers have not applied for positions through the district's online vacancy system or have not attended district-sponsored job fairs. Other teachers may be waiting for positions to become available in very specific or particularly attractive schools, and may postpone an active job search, potentially for years, until that occurs. While the ability to decline unappealing positions is at the core of the mutual consent concept, it is reasonable to suggest that the city's obligation to pay the costs of sustaining such teachers in a reserve pool should not be limitless.

In interviews in the fall of 2007, half of the teachers excessed in 2006 who remained unselected said that they planned to discontinue their job search for the 2007–2008 academic year. Of these teachers, 18 percent had never conducted a job search, and 15 percent had turned down one or more job offers. As one teacher explained, “I’m happy now [in the ATR]. I don’t have to prep, I don’t have to grade tests, I don’t have my own class. I don’t really have to do anything.” This trend continues among teachers excessed in 2007. In response to a survey, 71 percent of these teachers indicated that they were satisfied to remain in the Absent Teacher Reserve pool, and 20 percent planned to remain in the ATR this year without searching for a full-time position.

The most recent collective bargaining agreement between the New York City Department of Education and the United Federation of Teachers permits the district to offer a voluntary buyout to excessed teachers who have remained in the reserve pool for one full year. Given, however, that teachers can remain in the reserve pool indefinitely at full salary and benefits, it is likely that many teachers would decline to accept the buyout unless the financial terms were extremely generous. Moreover, the presence of a buyout option may further deter teachers from searching for positions, especially if they are already planning to leave the district within a few years. Rather than leaving, they may remain in the reserve pool until a buyout is made available.

In summary, current policies for excessed teachers do not provide a clear incentive structure for teachers to seek positions with maximum assertiveness. The district and teachers union may be able to significantly reduce the number of unselected excessed teachers simply by creating incentives that align with the desired outcome for both sides, which is to have as many teachers as possible staffed to positions that are solid, mutually supported matches.

“I’m happy now [in the Absent Teacher Reserve pool]. I don’t have to prep, I don’t have to grade tests, I don’t have my own class. I don’t really have to do anything.”

Forcing unselected excess teachers on schools may undermine New York’s hiring reforms by encouraging schools to hide their vacancies.

RETURNING TO A SYSTEM OF COMPULSORY TEACHER PLACEMENT IS NOT THE ANSWER

Over time, as costs for unselected excess teachers continue to grow, the pressure will mount for present and future district leaders to force these teachers into any available openings, as they had in the past. From a logistical and economic perspective, this may appear to be an efficient approach, but it is essential to recognize that it would be a disastrous one for schools—recreating the very problems that necessitated the new rules in the first place.³⁵

Continuing to force excess teachers on schools, particularly given the apparent performance problems of many unselected excess teachers, may undermine New York’s hiring reforms by encouraging schools to hide their vacancies. The most worrisome prospect, however, is that unselected teachers would be slotted disproportionately into high-need schools, which tend to have the most frequent vacancies. In this scenario, teachers not selected by any school in New York would be teaching students who most need outstanding instruction.

In summary, the present contractual rules are unsustainable and the prospect of returning to the former system of compulsory placement of excess teachers is equally problematic. The voluntary buyout option included in the 2006 NYCDOE-UFT contract may only exacerbate the present dilemma by providing a disincentive for teachers to pursue positions. We believe the data make clear that the current policy is fundamentally flawed and cannot be maintained over the long term.

Instead, the United Federation of Teachers and the New York City Department of Education must find an alternative solution that respects the needs of teachers while ensuring that the school system is not asked to carry costs indefinitely for hundreds or thousands of teachers without full-time classroom positions.



FORGING A NEW SOLUTION

We believe that, to be acceptable, any solution to the problem of unselected excessed teachers must accomplish the following important objectives:

Provide excessed teachers maximum opportunities, flexibility and support to seek positions that are a good fit, including expanded interview rights for teachers who have trouble getting selected;

Create incentives for teachers to participate fully in the job search process;

Provide financial incentives for principals to hire excessed teachers who are a good match for their schools;

Provide reasonable protections for the district from open-ended financial commitments; and

Respect the principle of mutual consent in all teacher placements.³⁶

Although none of the solutions currently available to New York City meets these criteria, we believe that at least one strategy promises to resolve this quandary while meeting the needs of teachers and the district: **placing unselected teachers on unpaid leave if they are unable to find a position after a certain period of time in the reserve pool— three school months for probationary teachers, and one school year for tenured teachers.** Teachers placed on unpaid leave would retain the right to return to the district at the same level of seniority and salary step if they are able to secure a mutual consent placement within a certain number of years (as negotiated by the NYCDOE and the UFT).

By taking this action while simultaneously 1) offering expanded job search supports for excessed teachers, and 2) providing tenured teachers with additional interview rights, the NYCDOE and UFT will be able to protect the rights of excessed teachers without undermining the mutual consent hiring system that has benefited so many of their colleagues.

The prospect of being placed on unpaid leave would provide a much-needed incentive for teachers to conduct an active job search that is absent under the current rules. At the same time, under this approach, teachers would not be pressured to accept a position merely to avoid permanent termination, nor would they be labeled

incompetent or banished from the school system if they are unable or unwilling to be hired. Instead, after an appropriate interval, teachers would transition to unpaid leave without benefits or pension contributions from the district but with the ability to reenter the system at their prior seniority and salary level upon securing a mutual consent placement at any point within a set timeframe.

We believe that permitting excessed teachers with tenure a full school year to search for a new position while receiving their full salary and benefits is a fair and reasonable policy—indeed, one that would be considered extremely generous by the measure of almost any other industry. As this study has shown, excessed teachers are generally able to find new schools in only half that time. Moreover, the data indicate that the vast majority of teachers value mutual consent and are satisfied with New York City's new approach to staffing; it is reasonable to suggest that exchanging marginally reduced job security for greater transparency and better results in the hiring process is a fair bargain for teachers and the right choice to make for New York City's students.

As we have seen in New York already, only a very small percentage of the entire teaching force (235 teachers out of approximately 79,000, or only about 0.3 percent) was unable to find a mutual consent position after a full year in the reserve pool. It is essential to recognize the prior service and the needs of this subset of employees and maximize their placement opportunities; however, the importance of providing a fair and open staffing process that meets the needs of teachers and schools citywide must trump the right of teachers to stay on payroll indefinitely even if they do not find new placements.

Promisingly, data published in 2007 by The New Teacher Project related to Chicago Public Schools (CPS) suggests that teachers support this policy approach and are not adversely affected by it. Chicago Public Schools places a 10-month limit on the length of time excessed teachers may serve in its reserve pool. Over a two-year period from 2005 to 2006, just 107 Chicago teachers exceeded the district's 10-month limit and were released from district employment entirely (in accordance with the local



collective bargaining agreement).³⁷ It is noteworthy that reserve pool limits did not make Chicago teachers any less likely to support the concept of mutual consent: 95 percent of incumbent teachers who participated in Chicago's placement process agreed that a principal's desire to have them in their school was important to them, and 90 percent said principals evaluated their candidacy fairly.³⁸

Our recommended approach for New York City differs from Chicago's policy in that teachers would not be released from the district. Rather, they would be placed on unpaid leave with the right to return if they locate a position within a reasonable timeframe. Further, we propose the creation of additional interview rights for tenured teachers who have been searching for positions at least six months.

The current contract between the New York City Department of Education and the United Federation of Teachers expires in October 2009. By that time, in excess of \$100 million will have been spent to fund reserve pool teachers who may or may not be actively searching for school-level positions. The city and the school district cannot afford to wait until 2009 or thereafter to remedy the issue of unselected excessed teachers.

Therefore, The New Teacher Project recommends that the NYCDOE and the UFT draft and approve a contract amendment that puts into effect the proposed policy described above and also guarantees the following:

Tenured teachers excessed after the enactment of a new policy framework for excessed teachers would be guaranteed one school year of consecutive reserve pool time.

Tenured teachers already in the reserve pool at the point when a new policy is adopted would receive one school year from the date of the amendment's approval before going on unpaid leave if they have not secured a mutual consent placement.

Probationary teachers would be guaranteed three school months of consecutive reserve pool time, again starting from the date of the amendment's approval. While in the reserve pool, they would not be eligible to receive tenure.

Summary of TNTP Recommendations for Excessed Teachers

Based on New York City's experiences, we recommend the following human capital reforms. We believe these reforms can also benefit other school districts and teachers unions that are committed to improving teacher quality:

Make mutual consent in teacher placements a core principle.

New York's transition from archaic, disruptive staffing provisions requiring forced placement of teachers to an open market that allows all teachers to compete on equal footing has been a positive change for nearly all teachers.

Enhance support for incumbent teachers seeking new positions.

To maximize the impact of mutual consent as a policy, districts must create meaningful opportunities for teachers to evaluate school environments and for principals to evaluate teacher candidates. Too often, districts offer robust support only for new teacher hires. Supports would include high-quality, one-stop online interfaces for posting and searching job positions; dedicated transfer/excess hiring fairs; and optional workshops for veteran teachers on how to pursue positions effectively.

Protect the job security of excessed teachers by allowing unselected teachers to remain in a reserve pool. Though a system of mutual consent gives teachers the best chance to find strong placements, there will be instances when good teachers face challenges finding a job. Unselected teachers with tenure should be able to remain in a reserve pool for up to one school year; for probationary teachers, we recommend three school months.

Guarantee tenured teachers the right to interview for job openings

once they have been in excess for six months. To recognize the service and contributions of tenured teachers, principals should at least be required to consider tenured teachers who have been searching for a position without success. In addition, the Department of Education should provide financial incentives for principals to hire excessed teachers who are a good match for their schools.

Offer training to principals on teacher selection. Mutual consent presumes that having principals select teachers for their schools is a more effective practice than selecting teachers according to a contractually-mandated process or having them selected by HR staff without regard to school context. This presumption requires that principals use rigorous, consistent selection criteria and treat all teacher candidates fairly and impartially. Most districts currently provide only minimal training to principals on hiring practices.

After a reasonable time in a reserve pool, place unselected excessed teachers on unpaid leave. Allow teachers on unpaid leave to continue searching for consensual positions in the district and to return at the same level of seniority and salary if they are able to find a position within a certain number of years.

Now is the
time for all
sides to work
together to find
a fair solution

In the effort to provide a quality education for every student, teachers are our most valuable resource. If our schools are to succeed, they must attract and retain the most talented and committed teachers possible, and an effective school staffing system is among the major factors in their ability to do so.

Schools cannot assemble quality instructional teams if they are forced to hire teachers regardless of whether those teachers meet school needs or fit with school culture. Teachers are less likely to be satisfied, motivated or effective if they are slotted into positions that they do not choose. As this paper shows, mutual consent-based staffing policies offer an effective alternative. In New York City, the mutual consent system has given school principals greater control over their instructional teams while offering teachers better choices, satisfying and lasting jobs, and a simplified and more transparent hiring process. The most important beneficiaries are students, especially those in high-poverty schools, who no longer risk being taught by teachers whom other schools may have been unwilling to hire.

While the 2005 collective bargaining agreement between the New York City Department of Education and the United Federation of Teachers represented a significant advancement for teachers and schools, the job remains unfinished. The policy governing excessed teachers is inadequate and misaligned with the goal of staffing schools effectively over time. Though schools can exercise discretion over which teachers they hire, the district is confronted with hundreds of teachers who have not been selected by any school despite months of job searching and an abundance of openings. Meanwhile, these teachers have been held in limbo, lacking full-time classroom assignments. Now is the time for all sides to work together to find a fair resolution for these teachers that also respects the interests of schools and students.

In any large system that asks teachers and principals to agree on each placement, there will be a small subset of excessed teachers that remains unselected over a significant period of time. This is not only inevitable, but healthy for the system. In these cases, districts should be required to offer reasonable job protections, time to seek a placement and the opportunity to take unpaid leave rather than to be dismissed—not a lifetime guarantee to remain on payroll. To do otherwise would require a return to failed policies of forced teacher placement or a long-term drain on scarce financial resources. Given the challenges facing educators, neither is a realistic option.

By working together to address this issue directly and with urgency, the NYCDOE and the UFT can develop policies that benefit all members of the school community and increase the quality of instruction in schools across the city. An effective resolution will both keep New York City on its trajectory towards an open and efficient school staffing system and also afford the hard-working teachers around which that system is structured ample time and opportunity to find positions that meet their needs.

AFTERWORD

A CASE STUDY IN THE CHALLENGES OF EDUCATION POLICY REFORM

The New Teacher Project originally published “Mutual Benefits” in April 2008. We did so only after privately presenting the major findings of the study to the New York City Department of Education and the United Federation of Teachers during two meetings in late 2007. Teachers union contract negotiations were not scheduled to begin until fall 2009, but we believed that more immediate action was necessary to keep the problem of unselected excess teachers from snowballing. Possible solutions included a special amendment to the contract (to be ratified by teachers outside of the normal negotiating process) or negotiation of a new policy that would not take effect until after the existing contract expired.

At the time, we hoped that the two parties might be able to agree to a reasonable policy solution if equipped with objective data and an opportunity to discuss the issue away from the media spotlight. Unfortunately, over the course of these meetings and the months of inactivity that followed, it became clear that no resolution would be forthcoming. Lack of agreement on a new policy meant a continuation of rising costs and an almost inevitable return to the flawed practices of the past: forcing unselected teachers into any available opening, regardless of their preferences or fit, to reduce those costs. Just two years after moving from an archaic, dysfunctional staffing system to a highly popular approach that honored the will of both the teacher and principal in each hiring decision, New York City was on course to regress.

In addition to corroding the integrity of the mutual consent staffing system, a return to such practices was likely to be especially detrimental to low-income students, whose schools tend to have the highest rates of teacher turnover and the most openings into which teachers can be slotted. As an organization that considers a quality education to be a civil right, we believed it would be unacceptable for schools in poor communities to be forced to take teachers whom other schools were not willing to hire. The problem had to be exposed so that it could be resolved.

The publication of “Mutual Benefits” attracted widespread attention from the media and the education community. It also proved controversial, due as much to its reporting of facts such as the \$81 million cost of supporting unselected teachers in the Absent Teacher Reserve (ATR) as to its recommendation that excess teachers who cannot find positions after a year in the ATR should be placed on unpaid leave.

Many observers took note of the fact that teachers unable to find permanent positions were six times as likely as the average city teacher to have received a past unsatisfactory performance rating. Others expressed shock that a teacher—even one with minimal experience in the system—could remain in the reserve pool indefinitely without applying for another position and could even earn tenure while doing so. The editorial boards of the New York Times, the New York Daily News and the New York Post were among those in agreement that the policy on unselected excess teachers needed to change. As the editors of the New York Times wrote:

The union disputes the report’s claim that the reserve teachers are much more likely to have had negative job ratings than teachers in general. But it is surely the case that some teachers in the pool will never find permanent jobs within the system. The city and the union need to explore new avenues for easing those teachers out of the system. Given the costs, this issue should be high on the agenda in the coming contract talks. (“Idle Teachers, Wasted Money,” April 30, 2008.)

Again, nothing happened.

It is now September, and in the intervening months the New York City Department of Education (NYCDOE) and the United Federation of Teachers (UFT) have not reformed a policy that is self-evidently dysfunctional. Meanwhile, the pool of unselected excess teachers has continued to grow even as fiscal conditions at the city and state level have worsened. The burden of this problem falls on New York City’s schools and their students.

A MOUNTING PROBLEM

In the spring and summer of 2008, a total of 2,039 teachers were newly excessed by New York City schools. As in previous years, a significant number of these teachers found new positions shortly after being excessed; 1,281 (63 percent) secured a new job, were reabsorbed by their former school, or exited the system by September. During this time, excessed teachers had thousands of job openings for which they could apply, along with extensive job-search support. As before, junior teachers made up the majority of the excessed pool.

Many of the remaining 758 teachers excessed in 2008 are likely to find positions within the next few months. Unfortunately, some will not. Instead, they will join other unselected excessed teachers from 2006 and 2007 in the school system's growing Absent Teacher Reserve, where they may remain indefinitely, whether they are seeking a job or not. As of September 2008, 637 teachers excessed in 2006 or 2007 remained without full-time jobs. Some of these teachers have been in the ATR continuously for more than two years. All have continued to earn their full salary and benefits while thousands of their colleagues sought and found teaching positions.

Had the NYCDOE and the UFT successfully implemented the policy solution recommended in this paper (providing non-probationary excessed teachers one year and extensive support to find positions before being placed on unpaid leave), none of these teachers would have stopped receiving a paycheck immediately. All tenured teachers in the ATR would have been permitted a year from the date of the

policy change to continue seeking new positions while receiving a variety of job search supports. Tenured teachers who were newly excessed in 2008 would have entered the ATR knowing that they had one year to find a job at a new school. Only in summer 2009 would the NYCDOE have begun to place tenured teachers who still lacked jobs on unpaid leave, at which point some of them would have been without full-time positions for three full years.

Instead, a total of 1,395 teachers will begin the 2008 school year without full-time jobs and without any limit on how long they may remain in the Absent Teacher Reserve. The data suggest that the number of excessed teachers without classroom positions will continue to increase annually, as more teachers are excessed and as, every year, a certain percentage of these teachers struggles to find new positions (*see Figure A*).

As the number of teachers in this situation grows, the costs of keeping them on payroll will continue to accumulate. Assuming that the 1,395 excessed teachers who began the school year without jobs are hired at similar rates as their colleagues from previous years, approximately 991 are likely to go without full-time jobs for the remainder of the 2008-09 school year.¹ These 991 teachers will continue in the ATR, earning their full salary and benefits at a projected cost of \$74.4 million for the 2008-09 school year alone.² This cost does not include the tens of millions the city has already spent to support teachers in the ATR from previous years, and next summer, the number of excessed teachers will increase yet again.

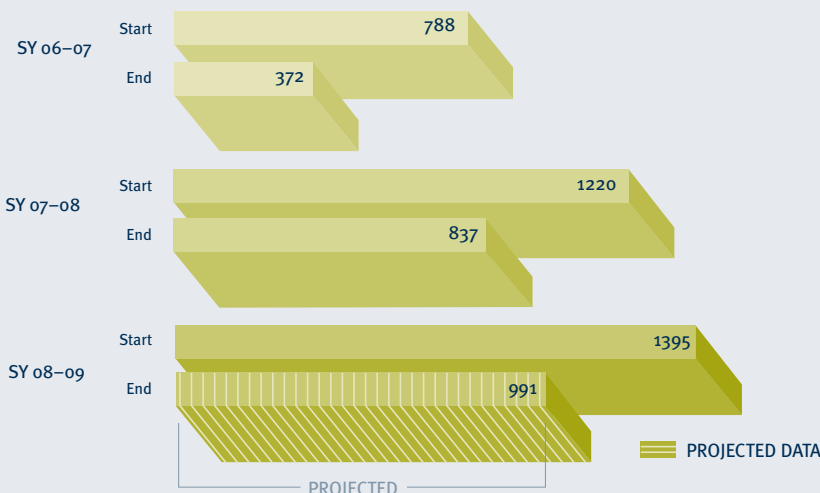


Figure A
NUMBER OF
UNSELECTED EXCESSED
TEACHERS (2006–2008)

This is not a problem that will go away if ignored; to the contrary, it grows more acute every month. As we noted in this paper, the problem is not New York City's excessed teachers, the vast majority of whom are dedicated individuals who want to work; the problem is the policy, which provides no incentive for excessed teachers to seek new positions and no release mechanism for those who are unable or unwilling to find full-time jobs even after years in the ATR.

A CASE STUDY IN THE CHALLENGES OF EDUCATION POLICY REFORM

If New York City's shift to a mutual consent-based staffing system offers a compelling case study in urban teacher hiring reform, the reaction to "Mutual Benefits" provides a glimpse into why meaningful reform is so often stymied and so rarely sustained.

When we published "Mutual Benefits," our intention was neither to create controversy nor to lay blame. Rather, we sought to catalyze a public debate that was long overdue and to help resolve a vexing problem while it was still manageable. By bringing to light a significant policy that seemed to defy common sense, we hoped to hasten reforms that not only would be more responsible from a policy perspective but also would be fiscally sustainable. We are a non-profit organization founded by teachers, dedicated to building the teaching profession, and engaged on a daily basis in recruiting, training and developing thousands of teachers nationwide. For all these reasons, we were committed to promoting a policy that would be fair and respectful to teachers themselves.

The reaction to "Mutual Benefits" shows why meaningful reform is so often stymied and so rarely sustained.

We were prepared for controversy, particularly from the United Federation of Teachers, for whom changes in the excessing policy raised important questions of job security. Even so, the reaction from UFT officials was extreme. In media interviews and on the union's official blog, UFT representatives mischaracterized our recommendations, disparaged our staff, and alleged that we were motivated by the prospect of financial gain. While the UFT also raised questions that were worthy of discussion and debate (for example, what incentives principals might be offered to hire excessed teachers), such questions were largely overshadowed by its attacks.

We released two written statements in response, the first of which addressed specific questions about our research and the second of which called for the UFT and the Department of Education to focus on the real issue—devising a fair and effective policy solution.³

As we wrote in the latter:

Both the New York City Department of Education and the United Federation of Teachers share an interest in a policy that minimizes the number of teachers without full-time teaching assignments and that supports an open and fair staffing system. It is now time for both parties to take action. The current policy is ineffective, unsustainable, and frustrating for all concerned. To be effective, a new policy for excessed teachers in the ATR pool must:

Protect the principle of mutual consent.

Provide incentives for excessed teachers to seek and accept positions that are a good fit for them.

Provide incentives for principals to hire excessed teachers who are a good match for their schools.

Ensure adequate job search support and opportunities for excessed teachers.

Be financially sustainable over time.

In “Mutual Benefits,” The New Teacher Project offered a proposal for a comprehensive policy for excessed teachers. The Department of Education has indicated publicly that it is receptive to that proposal, and the United Federation of Teachers has indicated that it is opposed to it. But the UFT has not proposed a comprehensive policy of its own, and the NYCDOE has not been specific as to which aspects of the TNTP proposal it supports and which, if any, it rejects.

We call on the United Federation of Teachers and the Department of Education to come to the table to determine a comprehensive solution. The question is not whether this problem should be addressed, but how. We are confident that both parties can find an answer that respects teachers and that honors their shared commitment to do what is best for all students.

Weeks afterward, the UFT released its official response to “Mutual Benefits” in the form of a white paper that reprised many of its previous arguments. Here again, inflammatory rhetoric obscured useful policy recommendations and areas of common ground.

For their part, the city and the schools administration were largely silent on the subject of excessed teachers in the weeks following the release of “Mutual Benefits.” NYCDOE spokespeople provided quotes to the media concurring with TNTP’s analysis and the need for policy reforms, but specifically denied that the administration was seeking to re-open contract negotiations with the union.

The reaction to the release of “Mutual Benefits” is a classic example of politics and inertia trumping the public interest. In the face of nearly unanimous public sentiment that it was unacceptable to pay tens of millions of dollars to teachers who remained unhired after years without positions, no change occurred. Now, months later, hundreds of teachers who have been in the Absent Teacher Reserve for more than a full year have been joined by hundreds more who were not selected for a position after being excessed this summer. Millions of additional dollars will be diverted from school budgets to pay for their salaries. Failure to settle a debate among adults means that kids lose out.

This counter-productive pattern distracts us from the real issues and hampers even the most common-sense changes, smothering debate while allowing flawed policies to survive. We believe this kind of policy-making is among the major reasons why America’s public schools so often seem impervious to change and locked in a cycle of failure. The families who depend on our public schools deserve better.

**Failure
to settle
a debate
among adults
means that
kids lose out.**

FACING THE FACTS

We believe strongly that if our schools are to succeed, we in the education community must together put an end to this pattern of politics and partisanship and face the facts. This includes the fact that poor and minority children continue to lag far behind other students in academic achievement; the fact that many aspects of our education system inadvertently perpetuate this failure; and the fact that the vast majority of teachers are competent, hard-working individuals who should be retained as long as possible—but not all of them are.

These facts may not always be easy to acknowledge or to act upon, but our ability to deliver on the promise of public education hinges on our ability to make the right choices on behalf of our schools and students. In this case, the facts clearly call for change.

Despite the UFT's strong stance to the contrary, teachers themselves appear to support policy changes that advance the profession even at the expense of job security. This summer, the American Federation of Teachers' official magazine, *American Educator*, published the results of a survey that asked teachers, "In general, when your union deals with issues that affect both teaching quality and teachers' rights, which should be the higher priority?" Fully 66 percent of teachers answered "Working for professional standards and good teaching" and 9 percent answered "both equally." Only 22 percent answered, "Defending teachers' job rights."⁴

Respecting teachers means more than blindly protecting their jobs at all costs. Teachers who are displaced from their jobs deserve fair treatment and time to seek new positions, but not unlimited time to serve as full-salaried substitutes. Neither should New York City resort to the past practice of force-placing teachers into open positions, which inevitably would send teachers that no other school is willing to hire into schools serving low-income students. Teachers are professionals who do complex, intellectually demanding work. They should not be slotted into schools like cogs into a machine.

Moreover, the success of our public schools is too critical to be determined through shouting matches; only through open, informed debate can difficult situations like this be resolved. This is a moment for leadership. NYCDOE Chancellor Joel Klein and UFT President Randi Weingarten have it in their power to determine a fair and reasonable policy solution. We are optimistic that the dialogue on this policy will eventually and belatedly result in reforms similar to those recommended in this paper, and we will continue to urge the United Federation of Teachers and the Department of Education to negotiate a solution that is in the best interests of the children with whose education they are entrusted. That's something worth fighting for, not something worth fighting about.

For now, we all continue to wait.



The New Teacher Project

October 2008

Respecting
teachers
means more
than blindly
protecting
their jobs at
all costs.

METHODOLOGY

Data included in this report were collected by The New Teacher Project (TNTP) between May 2006 and December 2007. TNTP assigned a team of full-time staff members to the New York City Department of Education from May through October 2006 and June through October 2007.

TNTP collaborated with district staff to track excessed teacher data from payroll, human resources and teacher tracking systems. Using district data, TNTP created a database that tracked excessed teacher movement in real time. Data were not tracked actively between December 2006 and June 2007.

TNTP obtained weekly lists of teachers in excess from the NYCDOE “Galaxy” payroll system. Galaxy reports provided all data on funding, budget amount, Open Market applications, seniority and licenses. Specific placement information was pulled from the Human Resource System (HRS), and retirement, resignation, termination and rating data was pulled from the Employee Information System (EIS). All job fair and event attendance data was collected directly by TNTP staff at each event.

TNTP conducted several surveys of excessed teachers. The first survey was sent to more than 2,700 teachers who were in excess at any point between May and November 2006. The survey was released on November 3, 2006, collecting 487 responses (18 percent response rate). The second survey was sent to all teachers in excess on July 20, 2007, and TNTP collected ongoing responses from newly excessed teachers until August 31, 2007; over 2,100 excessed teachers were sent the survey, and 425 excessed teachers responded (20 percent response rate).

In December 2007, TNTP distributed surveys to teachers who participated in the summer 2007 hiring process as voluntary transfers or excessed teachers. Of 5,153 voluntary transfer candidates who received the survey, 3,045, or nearly 60 percent, submitted responses. Of 1,834 excessed teachers, 584 responded, for a response rate of 32 percent.



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APPENDIX: 2005 TEACHERS UNION CONTRACT STAFFING RULES

ARTICLE 18

General Transfers

Effective school year 2005-2006, principals will advertise all vacancies. Interviews will be conducted by school-based human resources committees (made up of pedagogues and administration) with the final decision to be made by the principal. Vacancies are defined as positions to which no teacher has been appointed, except where a non-appointed teacher is filling in for an appointed teacher on leave. Vacancies will be posted as early as April 15 of each year and will continue being posted throughout the spring and summer. Candidates (teachers wishing to transfer and excessed teachers) will apply to specifically posted vacancies and will be considered, for example, through job fairs and/or individual application to the school. Candidates may also apply to schools that have not advertised vacancies in their license areas so that their applications are on file at the school should a vacancy arise.

Selections for candidates may be made at any time; however, transfers after August 7th require the release of the teacher's current principal. Teachers who have repeatedly been unsuccessful in obtaining transfers or obtaining regular teaching positions after being excessed, will, upon request, receive individualized assistance from the Division of Human Resources and/or the Peer Intervention Program on how to maximize their chances of success in being selected for a transfer.

ARTICLE 17

Rule 11. Unless a principal denies the placement, an excessed teacher will be placed by the Board into a vacancy within his/her district/superintendency; or if such a vacancy is not available, then in a vacancy within his/her region. The Board will place the excessed teacher who is not so placed in an ATR position in the school from which he/she is excessed, or in another school in the same district or superintendency.

¹ While some costs related to excessed teachers may be offset by savings on the substitute teacher pool, the cost of full-time reserve pool teachers is substantially higher than the cost of day-to-day substitutes. For additional detail on this cost estimate, see note 33.

² Though The New Teacher Project kept anonymous the names of the school districts studied in *Unintended Consequences*, NYCDOE Chancellor Joel Klein has shared publicly that New York City was among them.

³ The New Teacher Project (2007). “Teacher Hiring, Assignment, and Transfer in Milwaukee Public Schools.” Available for download at: <http://tnp.org/ourresearch/otherpublications.html#Milwaukee>.

⁴ Levin, Jessica; Mulhern, Jennifer and Schunck, Joan. (2005). “Unintended Consequences: The Case for Reforming the Staffing Rules in Urban Teachers Union Contracts.” The New Teacher Project.

⁵ See Article 18(a) and Article 17 (Rule 11) of the new contract.

⁶ For example, in the summer and fall of 2007, IHSC staff sent out 2,414 welcome letters and placement guides to excessed teachers; created and distributed a bi-weekly newsletter to 2,314 staff members via mail and email; developed a website specifically for excessed teachers, with job search tips and event listings; provided in-person support to 496 excessed teachers at seven NYCDOE job fairs; communicated individually with 823 excessed staff members; and offered 18 skill-building workshops, information sessions and “office hours” for excessed staff at locations across the city.

⁷ Casey, Leo (2007). “Transfers and Seniority: The Evidence [Updated].” EdWize.org. <http://edwize.org/transfers-and-seniority-the-evidence>. Accessed April 11, 2008.

⁸ TNTP surveys conducted in Nov–Dec 2007 of 3,045 voluntary transfer teachers and 584 excess teachers.

⁹ Ibid

¹⁰ TNTP survey conducted in Nov–Dec 2007 of 584 excessed teachers.

¹¹ Comments on survey conducted in Nov–Dec 2007 of 3,045 voluntary transfer teachers.

¹² Walsh, Kate and Tracy, Christopher O. (2007). “Increasing the Odds: How Good Policies Can Yield Better Teachers.” National Council on Teacher Quality. Washington, DC.

¹³ OMTS transactional data of 6,515 voluntary transfers in 2006 and 5,153 voluntary transfers in 2007.

¹⁴ Casey, Leo (2007).

¹⁵ Guidance counselors and other school-based staff were also excessed in 2006; however, this analysis focuses exclusively on teachers.

¹⁶ OMTS transactional data of 5,153 voluntary transfers; Galaxy data of 1,418 excess teachers.

¹⁷ As measured by percent of students eligible for free or reduced price lunch.

¹⁸ OMTS transactional data of 5,153 voluntary transfers.

¹⁹ TNTP survey conducted in Nov–Dec 2007 of 3,045 voluntary transfer teachers.

²⁰ The New Teacher Project (2007). “Teacher Hiring, Assignment, and Transfer in Milwaukee Public Schools.” (p.14)

²¹ Comments on survey conducted in Nov–Dec 2007 of 3,045 voluntary transfer teachers.

²² Ibid

²³ NYCDOE policy has further categorized excessed teachers as “centrally-funded” or “locally-funded.” Excessed teachers from schools that are closing or that have lost funding due to declines in enrollment are funded centrally by the DOE and deployed in other schools as full-time substitutes; teachers excessed by principals for other reasons, such as a decision to change course offerings, are funded out of school budgets until and unless the excessed teacher finds a regular position elsewhere.

²⁴ “Reabsorbed” is another term for returning to one’s former placement. Schools are required to reabsorb their excessed teachers when a vacancy becomes available that the teacher can fill – as long as the teacher has not accepted a position at another school already.

²⁵ See Levin et al., p. 17.

²⁶ 32 percent of 2006 excessed teachers who were unselected as of September 2007 and who had a prior “U” rating had received multiple “U” ratings in the past 10 years.

²⁷ While not typical, we encountered in our research a number of illustrative examples of unselected teachers with performance issues who present great challenges in the placement process. One teacher has been “U” rated six times in the past 10 years. This teacher, who has 17 years seniority and a license to teach Bilingual Elementary, has not submitted any online job applications, has not attended any job search support events and only attended one job fair during the past two summers. After 17 months in excess, the teacher remains unplaced while collecting full pay and benefits. In another case, an 11-year veteran math teacher was excessed from a closing school immediately after receiving an unsatisfactory rating. Because it generally takes two consecutive unsatisfactory ratings to initiate termination proceedings for a tenured teacher, this individual entered the teacher hiring market alongside other excessed teachers and voluntary transfers. Even after applying to 145 positions online between April and December 2006 and attending two job fairs in 2007, the teacher remains without a position.

²⁸ When a teacher is reabsorbed to a closing school, it usually means the teacher has been hired to a new school opening in the same location as the closing school (and therefore having the same school code as the closing school). Contractually, new schools must hire 50 percent of their faculty from the qualified staff of the closing school. Teachers from phasing out schools can also be reabsorbed before the school closes.

²⁹ Some instances in which a senior teacher would be excessed without a school closure: 1) At a particular school, all the teachers in a license area requiring excessing are very senior; 2) A school decides to end a program area and then excesses all the teachers who work within it.

³⁰ Source: TNTP interviews from Sept–Oct 2007 with 73 unselected excessed teachers.

³¹ District 79 (Alternative Schools and Programs) was restructured in 2007, which resulted in the blanket excessing of every teacher in the district, approximately 520 teachers. These teachers then participated in a unique hiring process specific to District 79. For this reason, data on these teachers' experience and success in securing new positions were not incorporated into this analysis; it would have been misleading to consider them along with other teachers whose excessing and hiring process was quite different and far more typical of the city's normal practices. (Even so, the data indicate that District 79 teachers fared very well in obtaining new positions. Overall, only 24 percent of teachers excessed from District 79 in 2007 still had not found a new position by December—lower than the unselected rate for teachers who were not from District 79 schools.)

³² In fact, some 2006 excessed teachers may not have even known that they had been excessed by their schools. Anecdotal evidence from school principals indicates that they sometimes placed teachers in excess while adjusting or restructuring their budgets, only to reabsorb the same teachers by September.

³³ This estimate reflects the total cost of salary and benefits earned by unselected excessed teachers, based on the teachers' seniority levels and New York City's standard salary scale and benefits package. The United Federation of Teachers has suggested that this cost may be offset by savings elsewhere (for example, in reduced substitute teacher costs and fewer new teacher hires), making the actual cost to schools lower. In fact, the figure may be considerably higher. This estimate does not include costs for the hundreds of teachers who spent part of a school year in excess before being reabsorbed or finding a new position, and it does not include costs for teachers who briefly found a position before being excessed again. It includes only salary and benefit costs associated with teachers continuously in excess.

Further, any estimate of costs savings is dependent on an accurate assessment of how teachers in the Absent Teacher Reserve pool match with a school's needs; for example, an ATR teacher licensed to teach English would not reduce a school's need for a math substitute if a math teacher were out on long-term leave. Likewise, any savings estimate also depends on an accurate understanding of the extent of each ATR teacher's classroom responsibilities. The UFT has provided data that suggests that many of these teachers are effectively occupying full-time positions as long-term substitutes, but its data are based on teacher self-reports rather than actual class schedules and do not take into account whether teachers filling such vacancies are actually qualified or certified to teach the subject to which they have been assigned. According to state certification requirements, NYCDOE would be unable to hire a teacher into a position for which he/she is not certified.

Even the most conservative methodology shows that New York City has spent tens of millions of dollars to support teachers in the Absent Teacher Reserve pool and that, under the current policy, this figure will only increase annually in the future.

³⁴ Teachers who have successfully completed the probationary period must only receive permanent state certification to receive tenure.

³⁵ For a full argument of the adverse effects of forcing, see The New Teacher Project's 2005 Unintended Consequences study, available at http://www.tntp.org/publications/unintended_consequences.html.

³⁶ Some may argue that given the relatively small number of excessed teachers from 2006 who remained unplaced – 553 as of December 2006 and 271 as of September—the downside of forcing just this group onto schools would be relatively small. However, a relatively small number of seniority transfers under the pre-2005 contract rules were sufficient to impair school staffing across the entire system by encouraging principals to hide vacancies and circumvent the official hiring rules.

³⁷ The New Teacher Project (2007). "Hiring, Assignment, and Transfer in Chicago Public Schools." Available for download at <http://tntp.org/ourresearch/otherpublications.html#Chicago>

³⁸ Ibid

AFTERWORD NOTES

¹ Excessed teachers who begin the school year without full-time positions are likely to find a new job during that year - or not at all. In the 2006-07 and 2007-08 school years, an average of 52.5 percent of all newly excessed teachers (i.e., those beginning their first year in the ATR) who began the year without jobs remained unselected at the end of the year. After completing their first school year in the ATR pool, teachers are much less likely to secure a full-time position; in 2007, the total number of teachers who remained unselected for their second year decreased by only 7.1 percent over the course of the school year.

Of the 1,395 teachers in the ATR as of the beginning of the 2008-09 school year, 758 will be in their first year without jobs; 351 in their second year; and 286 in their third year. Assuming that the rates at which these teachers leave the ATR are consistent with previous years (and that excessed teachers in their third year without jobs are not any more likely to leave the reserve pool than they were in their second year), about 991 teachers will remain without jobs at the end of the year (398 of those in their first year; 326 of those in their second; and 267 in their third).

² Cost estimates were calculated based on New York City Department of Education payroll data on teachers in the ATR pool. As discussed in the report itself, it is possible that offsets such as reduced substitute teacher costs could decrease the actual cost to schools; however, this projection is conservative in that it includes only the cost of teachers serving in the ATR for a full year, and not the hundreds of teachers who may secure a position prior to the end of the school year but only after first serving months in the ATR. If all 1,395 teachers in the ATR were to go without jobs for the remainder of the 2008-09 school year (an unlikely but possible outcome, under the current policy), the projected cost to New York City schools would rise to approximately \$104 million.

³ Both statements are available at www.tntp.org/publications/Mutual_Benefits.html.

⁴ American Federation of Teachers (2008). "We Asked, You Answered." American Educator. Summer 2008: 6-7.



About the New Teacher Project | Founded by teachers,

The New Teacher Project (TNT) is a national nonprofit organization dedicated to increasing the number of outstanding individuals who become public school teachers and creating environments for all educators that maximize their impact on student achievement. Since its inception in 1997, TNT has hired or trained approximately 28,000 high-quality teachers, worked with over 200 school districts, and established more than 55 programs or initiatives in 27 states. TNT has also published two national studies on teacher hiring and school staffing in urban areas: *Missed Opportunities: How We Keep High-Quality Teachers Out of Urban Classrooms* (2003) and *Unintended Consequences: The Case for Reforming the Staffing Rules in Urban Teachers Union Contracts* (2005).

TNT has partnered with the New York City Department of Education on a number of educational initiatives, such as the New York City Teaching Fellows program. Currently, more than 8,000 Teaching Fellows who were recruited, selected and trained by TNT are teaching in classrooms across New York City. The vast majority of these teachers were hired specifically to fill vacancies in high-need subject areas such as math, science and special education, and most Fellows accept positions in schools that serve high percentages of students from low-income families. Nearly all Teaching Fellows are active UFT members; in some cases, they serve as chapter leaders or in other roles within the union.

In addition, as noted elsewhere in this paper, the NYCDOE partnered with The New Teacher Project to launch and manage an Internal Hiring Support Center to maximize placement opportunities for excess teachers. This Center operated from May through October during the 2006 and 2007 hiring seasons. Funding for the Internal Hiring Support Center was raised by The New Teacher Project in 2006; in 2007, the NYCDOE covered the majority of its costs.

This policy brief represents the opinions and analysis of The New Teacher Project alone, and not those of the New York City Department of Education or the United Federation of Teachers. Nonetheless, both parties have received briefings on the data and conclusions it contains.

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